



Date of Council Work Session: March 24, 2015

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: Sewer Construction Agreement and Sole Source Procurement for Construction of Phase II of Lower Sycolin Sanitary Sewer Conveyance System by Peterson Companies

Staff Contact: Amy Wyks, Director of Utilities
Renee LaFollette, Director of Capital Projects
Barbara Notar, Town Attorney

Council Action Requested: A decision by Council is needed to approve a construction agreement between the Town of Leesburg (“Town”) and the Peterson Companies (“Peterson”). Additionally, a determination by Council is needed that states the construction agreement is a “sole source” under the Virginia Public Procurement Act (VPPA) for the Phase II gravity sanitary sewer main of the Lower Sycolin Sanitary Sewer Conveyance System.

Staff Recommendation: Staff recommends approval of the resolution for a construction agreement with Peterson and declaring the construction agreement to be a sole source procurement under the VPPA to construct the Phase II gravity sanitary sewer main for the Lower Sycolin Sanitary Sewer Conveyance System.

Commission Recommendation: Not Applicable.

Fiscal Impact: The Lower Sycolin Sanitary Sewer Conveyance System is an approved Capital Improvement Program in the total amount of \$9,329,878. Phase I was completed in June 2014 and the project cost was \$5,329,878 (Including design costs for Phase II.) Phase II will be constructed by Peterson at a mutually agreed upon fixed cost of \$4,000,000. Construction of the Phase II gravity main will be constructed by Peterson, and the sewer construction agreement outlines all the conditions for the contract. As properties are developed within the sewer shed, a pro-rata fee will be calculated and charged in order to recover the cost to design and construct both phases of the sanitary sewer system.

Executive Summary: The proposed sewer construction agreement and sole source procurement would permit Peterson to construct the Phase II Lower Sycolin Sanitary Sewer gravity sewer main along Cochran Mill Road to their property at Compass Creek (formally Crosstrail). In 2002, the Lower Sycolin Creek Sewer Shed Study determined the best alternative to provide sewer service to the area. The study included a sewer pipe alignment, pump station and force main and identified the associated sewer flows from the properties in the Lower Sycolin Sewer Shed located within the Joint Land Management Area (JLMA). In 2012, Council committed to the Phase II gravity sewer main with resolutions for condemnation of land to

obtain easements for the sanitary sewer main. There is a portion of the sanitary sewer line that will parallel the future reclaimed water main to Panda Energy. Over blasting within the easements for the two pipes has been included in agreements with both Peterson and Panda Energy. Two separate and independent engineering cost estimates have been completed and the proposed \$4 Million construction was with \$20,000 of each estimate. Peterson runs the risk if the construction cost exceeds \$4 Million and Peterson will not be charging any overhead or fee for the management and oversight of the project.

Code of Virginia, Section 2.2-4303(E) of the VPPA authorizes the Town Council to forego competitive sealed bidding or competitive negotiation if the council determines, in writing, that only one source is practicably available to complete the services for which procurement is needed. Peterson owns a majority of the land which will be served by the Phase II Project and is in the process of developing this land. Peterson desires sanitary sewer service to be available and is willing to construct the line on behalf of the Town. If the Town Council determines that the Peterson/Town Agreement is a sole source, the Town Manager can procure and execute an Agreement with Peterson to construct the Phase II Project.

Background: The Lower Sycolin Sanitary Sewer Conveyance System is an approved and funded Capital Improvement Program in the total amount of \$9,329,878. Phase I was completed in June 2014 with a project cost of \$5,329,878 (Including design costs for Phase II.) In 2012, the Town's Capital Improvements staff began acquiring easements for the proposed Phase II gravity sewer main. Phase II will be constructed by Peterson at a mutually agreed upon fixed construction cost of \$4,000,000 per attached sewer construction agreement outlining terms, conditions and reimbursement. As properties are developed within the sewer shed, a pro-rata fee will be calculated and charged in order to recover the cost to design and construct both phases of the sanitary sewer system.

Since discussion began regarding the development of Compass Creek (formally Crosstrail), the Town and Peterson have been working together to develop an agreement to ensure sanitary sewer capacity will be readily available for the development. Both parties, during meetings and conference calls, have worked through numerous issues including reimbursement of costs associated with engineering, construction, and inspection services. The project will not be publicly bid by the Town, but will follow all provisions in the attached sewer construction agreement. In order to properly evaluate the proposed agreement by Peterson, the Town retained Greene Hurlocker, PLC to assist in the review.

The attached sewer construction agreement for Phase II gravity sewer main includes the following:

1. Peterson to construct Lower Sycolin Phase II for \$4,000,000.00. If the Town constructs Phase II, management and change orders could result in a higher total construction cost;
2. Peterson will not be charging any overhead or fee for the management and oversight of the project.
3. Peterson is taking responsibility for the schedule and delivery obligations.
4. Peterson is uniquely positioned to execute the work in conjunction with the development of the Compass Creek onsite infrastructure.

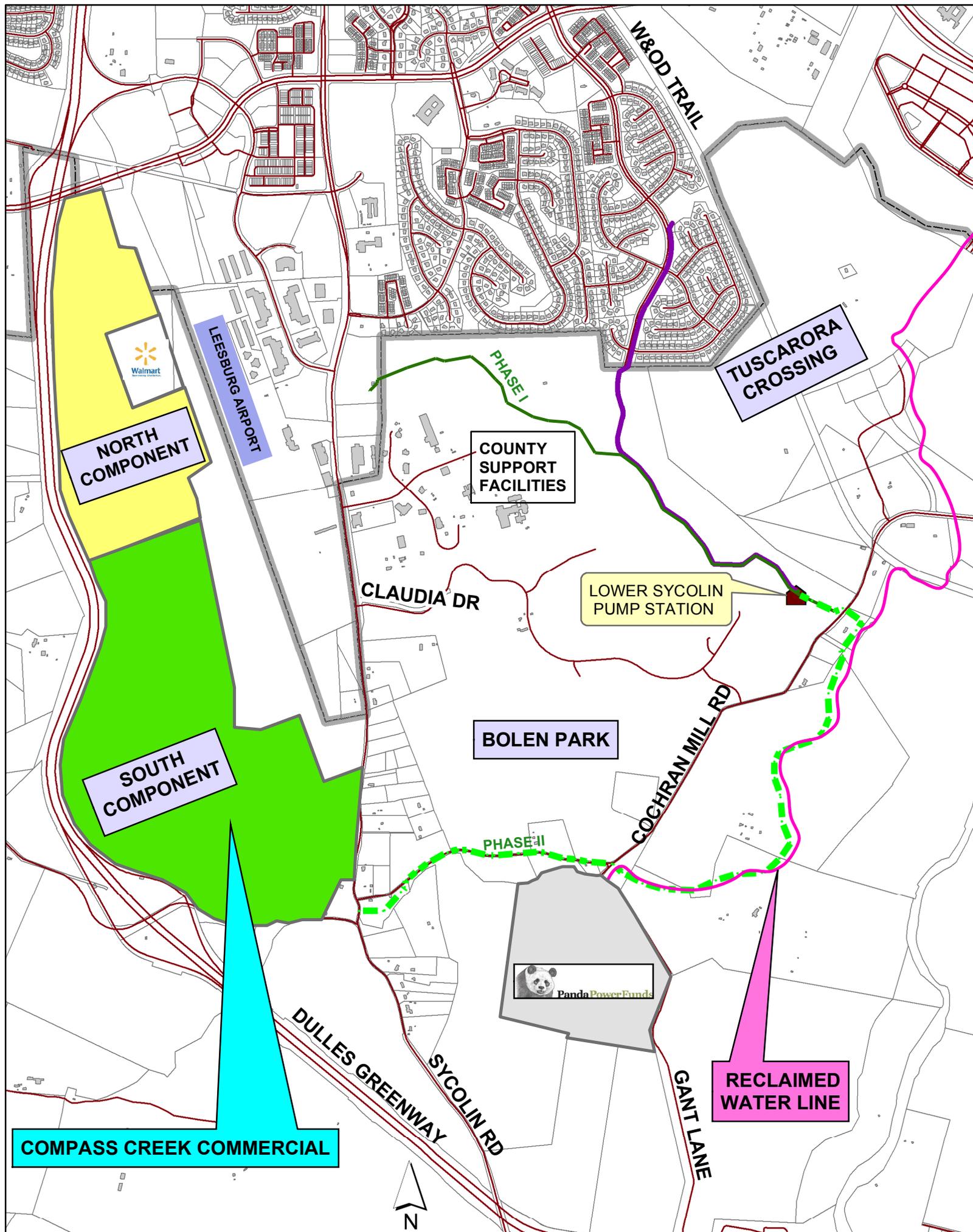
5. The approval of the Agreement will resolve potential timing issues with the delivery of the reclaimed water line with Panda Energy.
6. Town has previously acquired easements for gravity sewer main to Compass Creek development;
7. Town to reimburse Peterson \$2,584,881 which represents the pro-rata share of miscellaneous properties, and the southern Crosstrail development that benefit from construction of Phase II gravity sewer;
8. Town will then reimburse Peterson the Phase II pro-rata of \$1,415,119 when the northern development public facilities permits are paid. Note: The Phase I pro-rata for the northern development will also be paid to the Town during the permit process.
9. The southern development projects will pay the Town their cost share of Phase I and Phase II pro-rata's with public facility permit process. (No reimbursement to Peterson)
10. The Town will receive Pro-Rata fees to recover the cost of Phase I & II of the project when properties are developed within the Lower Sycolin Sewer shed; and
11. The Town will receive revenue from out of town users for the majority of the properties developed within the Lower Sycolin Sewer shed.

The award of this Agreement is subject to the Virginia Public Procurement Act. In order for the Town to award this contract to Peterson, the Town Council must determine, in writing, that Peterson is a "sole source" under Code of Virginia, § 2.2-4303(E). A sole source determination may occur "if there is only one source practicably available for that which is to be procured". The test for sole source is whether a particular product or service is "practicably" available, not whether it can be found anywhere. Peterson owns a majority of the land for which the Phase II Project will serve. Peterson is currently developing the land and desires the Project to be completed to continue its development. Peterson is in a unique position to construct the Phase II Project on behalf of the Town and can be considered a "sole source" under the VPPA. The resolution can serve as the "written determination" under the VPPA.

Attachments: Resolution

Agreement with Peterson Companies

Map of Lower Sycolin Sanitary Sewer Conveyance System



NORTH COMPONENT

SOUTH COMPONENT

COMPASS CREEK COMMERCIAL

LEESBURG AIRPORT

COUNTY SUPPORT FACILITIES

LOWER SYCOLIN PUMP STATION

TUSCARORA CROSSING

BOLEN PARK

RECLAIMED WATER LINE

Panda Power Funds

CLAUDIA DR

COCHRAN MILL RD

GANTT LANE

SYCOLIN RD

DULLES GREENWAY

W&D TRAIL

PHASE I

PHASE II



**AGREEMENT FOR THE CONSTRUCTION OF PHASE II LOWER SYCOLIN
GRAVITY MAIN**

THIS AGREEMENT FOR THE CONSTRUCTION OF PHASE II LOWER SYCOLIN GRAVITY MAIN (this "Agreement") is entered into this 24th day of March, 2015 (the "Effective Date"), by and between THE PETERSON COMPANIES, L.C., a Virginia limited liability company ("Peterson") and the TOWN OF LEESBURG, a Virginia municipal corporation (the "Town"). Peterson and the Town are collectively referred to herein as the "Parties."

RECITALS:

WHEREAS, the Town authorized the construction of the Lower Sycolin Sanitary Sewer Conveyance System (the "System") and established a pro rata fee structure for reimbursement in 2005, as contained in Leesburg Town Council Resolution No. 2005-182 (the "Phase I Resolution"). The Town constructed and placed Phase I of the System into operation on December 17, 2013; and

WHEREAS, on March 24, 2015, the Town Council revised the pro rata fee structure previously authorized by the Town Council in the Phase I Resolution to reflect an adjusted and updated pro rata based upon re-zonings, development and actual construction costs for Phase I of the System, as set forth in Exhibit A; and

WHEREAS, on March 24, 2015, the Town Council reviewed and approved Resolution No. [_____], as set forth in Exhibit A (the "Phase II Resolution"), which (a) authorized Peterson to undertake the construction of Phase II of the System and (b) established a pro rata fee structure for reimbursement of the construction costs of Phase II of the System, based on the currently anticipated development, approved re-zonings for the sewer shed and construction costs; and

WHEREAS, the geographic area to be served by Phase II of the System is comprised of three geographic portions, (a) the Crosstrail Northern Area, (b) the Crosstrail Southern Area and (c) certain Unassigned Areas, as shown more particularly on Exhibit B; and

WHEREAS, the pro rata fee structure established pursuant to the Phase II Resolution may be revised by the Town if land use changes within the sewer shed as a result of future re-zonings, development and construction costs; and

WHEREAS, affiliates of Peterson are the owners and developers of the Crosstrail Development (the "Development"), which is located within the Town's sewer service area and is located at the end of the planned System; and

WHEREAS, the completion of Phase II of the System is necessary for the Development to be served by the Town's sanitary sewer System; and

WHEREAS, Peterson is uniquely positioned to efficiently construct the completion of Phase II of the System (the "Work") in connection with the construction of the Development as a sole source procurement; and

WHEREAS, Peterson has agreed complete the Work, subject to reimbursement for the costs associated with the Work by the Town; and

WHEREAS, the Town and Peterson have completed and agreed upon the plans for the completion of the Phase II of the System; and

WHEREAS, the Town and Peterson have agreed (i) for Peterson to complete the Work for the fixed price of FOUR MILLION US DOLLARS (US \$4,000,000.00) (the "Fixed Price") and (ii) for the Town to reimburse Peterson for such completion costs as set forth in this Agreement; and

WHEREAS, the Town and Peterson desire to set forth in this Agreement the terms and conditions by which Peterson will perform the Work and be reimbursed by the Town for doing so.

NOW, THEREFORE, WITNESSETH: the Recitals set forth above being incorporated herein by reference, in consideration of the foregoing and the mutual undertakings and covenants contained herein, the Town and Peterson, each pursuant to due and proper authority, do hereby agree as follows:

1. System Plans, Permitting and Approval Process

1.1. Peterson shall construct Phase II of the System and perform the Work in accordance with the Design and Construction plans, easement plats and/or reports for Phase II of the System as shown on the Dewberry plans dated February 17, 2015 (the "Phase II Plans"). Phase II of the System was designed by Dewberry, and any references to "Engineer" in this Agreement or any exhibits hereto shall mean: Dewberry. The Town shall deliver CAD files for Phase II Plans.

1.2. Phase II Plans are designed to accommodate the sewer flows shown on Exhibit "D". Exhibit D shall be subject to revision following the Effective Date hereof in the event that sewer flows are greater or lesser than the flows set forth on Exhibit "D" hereto. Under no circumstance shall the Phase II Plans be changed to accommodate different sewer flows other than those shown on Exhibit "D" after the Effective Date.

1.3. The Town warrants the accuracy and adequacy of the Phase II Plans as i) being in compliance with all regulatory requirements imposed by local, state and federal regulatory agencies, and ii) being sufficient to accommodate the Town's anticipated sewer capacity as shown on Exhibit "D". The cost of any changes required to the Phase II Plans as a result of errors and/or omissions are not included in the Fixed Price. The Fixed Price shall be adjusted by mutual agreement of the Parties to correct such error and/or omission.

1.4. Permits and Regulatory Approvals

- 1.4.1. The Town shall be the applicant for all required regulatory permits and approvals (collectively the "Permits") and is responsible for obtaining all necessary Permits including, but not limited to:
 - 1.4.1.1. Loudoun County Grading Permit.
 - 1.4.1.2. DEQ Certificate to Construct.
 - 1.4.1.3. Wetland, Stream Impact and similar Permit(s).
 - 1.4.1.4. VDOT Right-Of-Way Permit(s).
- 1.4.2. The Town will be responsible for any and all Permit application costs and fees in connection with the Permits and any mitigation required as a condition of said Permits. The Town will provide Peterson with notification of each Permit submission, and a copy of the approved Permits when received.
- 1.4.3. Following the submission of applications for the Permits, the Town will use reasonable efforts to obtain such Permits in a timely fashion. The Town estimates, but does not guarantee, receipt of all necessary Permits on or about April 15, 2015; provided, that the Loudoun County Grading Permit and the VDOT Right-of Way Permits must be obtained by May 1, 2015.

2. Easements

- 2.1. The Town will make reasonable efforts to acquire any and all necessary easements for access to, construction of and maintenance of Phase II of the System by May 1, 2015, including easements on the Koski Parcel as shown on Exhibit E. If the Town cannot acquire the easements with the cooperation of the property owners, it will initiate the process to acquire the easements by eminent domain quick take no later than May 1, 2015.
- 2.2. Peterson will be responsible for any mitigation credit payment required due to any work performed by it or its contractors which is outside of the easement areas and not included in the Phase II Plans.
- 2.3. Peterson will assist the Town in its efforts to acquire any necessary easements needed from Loudoun County for the construction of Phase II of the System. Such assistance shall be limited to lobbying and negotiating with County staff. Under no circumstance will Peterson be required to make any financial contribution or payment to acquire such easements.
- 2.4. Peterson will provide the necessary easements for providing sewer service on its property, at no cost to the Town, for the terminus manhole and any associated pipe.

3. Performance of the Work

3.1. The Town and Peterson hereby agree that Peterson will perform the Work and reach Final Completion by a date certain as set forth herein (unless and to the extent that such failure to reach Final Completion is delayed due to a Force Majeure Event or the actions or inactions of the Town).

3.2. Peterson hereby agrees to perform form the Work in strict accordance with:

3.2.1. This Agreement;

3.2.2. The Permits;

3.2.3. The Phase II Plans;

3.2.4. The Town's Design and Construction Standards Manual ("DCSM");

3.2.5. The Specifications for the Work; and

3.2.6. Any other documents referenced in this Agreement.

The foregoing documents are hereby deemed the "Contract Documents".

3.3. The Parties acknowledge and agree that Peterson shall coordinate the Work with the construction of the reclaimed water line by the owner of the natural gas-fired electrical power generation facility (the "Power Plant"), which is to be developed on certain property consisting of approximately 101 acres located south of the Town's corporate limits. Without limiting the above, Peterson shall coordinate the Work with any overblasting performed by the Town and/or the Power Plant owner with respect to the construction of a reclaimed water line between the Town's wastewater treatment facility and the Power Plant.

3.4. Documents and Submittals.

3.4.1. Peterson shall maintain, and at all times make available to the Town, one record copy of all drawings, specifications, addenda, change orders and other modifications thereto, in good order and marked currently to record all changes made to the Phase II Plans during the performance of the Work.

3.4.2. Peterson shall submit with reasonable promptness and in such sequence as to cause no delay in the performance of the Work, all shop drawings, product data, manuals, samples mock-ups and such other submittals (the "Submittal Documents") to the Town. The Town shall have right to review all such Submittal Documents and provide comments to Peterson based on such review within fifteen (15) days; provided, however, that any review and comment of such Submittal Documents by the Town does not constitute approval of such documents or otherwise relieve Peterson from its obligations to perform the Work in accordance with the Contract Documents.

If the Town does not comment on the Submittal Documents within fifteen (15) days, they will be deemed approved by the Town.

3.5. Schedule Phase II Final Acceptance Date. Subject to the issuance of the Notice to Proceed by June 1, 2015, Peterson shall complete the Work and Phase II of the System shall be ready to receive sewer flows no later than June 30, 2016, as such date may be extended pursuant to the terms hereof, including the occurrence of a Force Majeure Event.

3.6. Town's Right to Stop or Suspend Work.

3.6.1. If Peterson fails to correct defective Work as required by this Article 3 or fails to carry out the Work or supply labor and materials in accordance with the Contract Documents, the Town by written order may order Peterson to stop the Work, or any portion thereof, without monetary compensation to Peterson until the cause for such order has been eliminated.

3.6.2. The Town may order Peterson in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as it may determine to be appropriate for the convenience of the Town. If the Town stops or suspends the Work; i) the time for completion of the Work shall be extended accordingly; and ii) the Town shall be responsible for the increase in costs from the stoppage or delay.

3.6.3. If the performance of all or any part of the Work is suspended, delayed, or interrupted by the Town for fifteen (15) days, or by failure of either of them to act within the time specified (or if no time is specified, within a reasonable time), an adjustment increasing the time of performance of the Work shall be made. Such adjustments will be made solely for any suspension, delay, or interruption over fifteen (15) days. The Agreement shall be modified in writing accordingly. However, no claim for an extension of time shall be made under this Paragraph 3.6.3 for any suspension, delay, or interruption pursuant to Paragraph 3.7.1, or for which claim is provided or excluded under any other provision of this Agreement.

No claim under this Paragraph 3.6.3 shall be allowed for any claim for an extension of time required for performance, unless within twenty days after the act or failure to act involved, Peterson submits to the Town a written statement setting forth, as then practicable, the extent of such claimed time extension and unless the claim for an extension of time is submitted with supporting data within thirty days after the termination of such suspension, delay, or interruption.

3.6.4. In the event of a suspension of work or delay or interruption of work pursuant to Section 3.6.1, Peterson will protect carefully its materials and work against damage from the weather and maintain completed and uncompleted portions of the work as required by the Contract Documents. If

suspension of Work is due to Section 3.6.2, then the Town shall pay costs to protect materials. If, in the reasonable opinion of the Town, any work or material shall have been damaged by reason of failure on the part of Peterson to protect same, such work and materials shall be removed and replaced at the expense of Peterson.

3.6.5. No claim by Peterson under Paragraph 3.6.3 shall be allowed if asserted after final payment under this Agreement.

3.7. Town's Right to Carry Out Work

3.7.1. If Peterson defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a thirty (30) day period after receipt of written notice from the Town to commence and continue correction of such default or neglect with diligence and promptness, the Town may after the thirty (30) day period give Peterson a second written notice to correct the deficiencies within a three day period. If Peterson fails to commence and continue to correct any deficiencies within the second notice's three day period, the Town may, without prejudice to other remedies the Town may have, correct such deficiencies. In such a case an appropriate Change Order shall be issued pursuant to Article 5 deducting from the payments then or thereafter due Peterson the cost of correcting such deficiencies, including compensation for services of the Town, the engineer and any other additional services made necessary by such default, neglect or failure. If the payments then or thereafter due Peterson are not sufficient to cover such amount, Peterson shall pay on demand the difference to the Town.

3.7.2. The Town will not be liable or accountable to Peterson for the method by which the Work, or any portion thereof, performed by the Town or by separate contractors pursuant to Paragraph 3.7.1 is accomplished or for the price paid therefor.

4. Time for Completion of the Work

4.1. **Notice to Proceed.** Upon satisfaction of the conditions set forth below, as determined by the Town in the exercise of its commercially reasonable judgment, the Town shall issue a "Notice to Proceed" to Peterson to commence the construction of Phase II of the System and the balance of the Work:

4.1.1. Issuance of all required governmental approvals and Permits; provided, however, that the Town's receipt of the VDOT Right-Of-Way Permits shall not be required to commence performance of the Work and the Town may issue the Notice to Proceed prior to the receipt of the VDOT Right-Of-Way Permits. If receipt of the VDOT Permits is delayed past May 31, 2015, Peterson shall receive a day for day extension to complete the Work.

4.1.2. Acquisition of all required easements;

4.1.3. Execution of any agreements with respect to the coordination of the Work between Peterson and the Power Plant referenced in Paragraph 3.3; and

4.1.4. Completion of the pre-construction conference between the Town and Peterson representatives.

4.2. Peterson Termination Right. If the Notice to Proceed is not issued by June 1, 2015, then Peterson will have the option of terminating this Agreement, in accordance with Paragraph 14.1.1.

4.3. Time of the Essence

4.3.1. All time limits in this Agreement are of the essence.

4.3.2. Contract Time

4.3.2.1. The Work shall be commenced after issuance of the Notice to Proceed, and Peterson shall complete the Work and notify the Town of completion within three hundred sixty-five (365) calendar days of the date of the Notice to Proceed (“Substantial Completion”).

4.3.2.2. Peterson shall address any Town comments or issues with the Work in order to achieve Phase II Final Acceptance within thirty (30) days of receiving the Town’s comment in accordance with the process set forth in Article 8 below.

4.4. Release of Bonds. Upon the date of Phase II Final Acceptance, Peterson shall apply to the Town Council for the release the Performance and Payment Bond posted by Peterson or its contractor, in accordance with Paragraph 18.1.

5. Changes in the Work

5.1. In the event that unforeseen circumstances arise, the parties may mutually agree upon a change in the work (“Change in the Work”). Any Change in the Work shall be documented by a written change order (a “Change Order”). Any necessary changes in the contract time or the cost of the work shall be memorialized in such Change Order.

5.2. Peterson shall proceed in accordance with such mutually agreed upon Change Order. Provided, however, that Peterson shall not begin work on any alteration requiring a modification until such modification has been executed by the Town and Peterson.

6. RESERVED

7. Force Majeure and Excuse from Performance by Governmental Acts

- 7.1.** The respective duties and obligations of the Parties shall be suspended while and as long as performance is prevented or impeded by strikes, disturbances, riots, fire, severe weather, government action (excluding action of the Town), war acts, acts of terrorism, acts of God or any other cause similar or dissimilar to the forgoing that are beyond the reasonable control and not due to the fault or negligence of the party from whom the affected performance was due ("Force Majeure Event").
- 7.2.** In the event that a Force Majeure Event prevents the affected party from performing its duties and obligations for a period of ninety (90) consecutive days, the non-affected party shall have the right to terminate this Agreement upon thirty (30) days prior written notice to the affected party, unless the affected party cures the Force Majeure Event and commences performance within such notice period.
- 7.3.** If for any reason prior to the issuance of the Notice to Proceed, local (excluding the Town), state, or federal governments or agencies fail to issue necessary permits, fail to grant necessary approvals, or require any substantial change in the design or scope of Phase II of the System, then this Agreement may be terminated by either Party.

8. Completion of the Work; Phase II Final Acceptance

8.1. Final Completion of the Work.

- 8.1.1.** Upon receipt of the documentation required by Paragraph 8.1.2, and of written notice that the Work is ready for final inspection and acceptance, the Town will promptly make such inspection and, when it determines that the Work acceptable under the Contract Documents and the Agreement is fully performed, the Town will issue a Certification of Final Completion to Peterson. The date that the Town issues the Certificate of Final Completion to Peterson shall be deemed "Phase II Final Acceptance."
- 8.1.2.** The Town shall not be required to release any retainage amounts held pursuant to Paragraph 9.2.2 until (a) the Work is free and clear of any and all liens and (b) Peterson submits the following to the Town:
- 8.1.2.1.** An affidavit by the General Contractor that all payrolls, bills for materials and equipment and other indebtedness connected with the Work for which the Town may in any way be responsible, have been paid or otherwise satisfied;
- 8.1.2.2.** As-Built Documents, O&M manuals and other project closeout submittals, as requirement by the Contract Documents;

8.1.2.3. A fully executed and notarized release of claims in such form as may be designated by the Town, and a written certification that: (a) Peterson has reviewed the requirements of the Contract Documents; (b) the Work has been inspected by Peterson for compliance with all requirements of the Contract Documents; (c) the Work complies in all respects with the requirements of the Contract Documents; and (d) all systems have been installed and tested in accordance with the Contract Documents.

8.2. Phase II Final Acceptance. Following Phase II Final Acceptance, pursuant to Paragraph 8.1.1, and the Town's payment to Peterson of the Fixed Price amount then due and owing pursuant to Paragraph 9.2, Peterson shall convey to the Town all of its right, title and interests in and to the Phase II facilities, including, but not limited to, As-Built Documents and O&M manuals.

9. Reimbursement of Fixed Price Costs

9.1. Pursuant to the Phase II Resolution and the Town Ordinance _____, the Town shall reimburse Peterson the Fixed Price for construction costs of Phase II as follows:

9.2. Partial Fixed Price Payment. During the performance of the Work, the Town shall reimburse Peterson a total of \$2,584,881 of the total Fixed Price for constructing Phase II of the System. The reimbursement amount set forth in this Paragraph 9.2 shall be paid as follows:

9.2.1. Progress Payment Structure. The Town and Peterson agree that the Peterson may perform the Work in segments, each a "Milestone." For the avoidance of doubt, achievement of a Milestone segment identified in Paragraph 9.2.3 does not constitute acceptance of the Work, in whole or in part.

9.2.1.1. When Peterson determines that a Milestone has been achieved, Peterson shall deliver to the Town an invoice for reimbursement of the amount associated with such Milestone, as identified in Paragraph 9.2.3 hereof (each, a "Milestone Payment"). Each invoice shall be in a form as agreed to by the Parties and shall include such documentation as the Town may reasonably require to confirm that the Milestone was achieved.

9.2.1.2. Following receipt of an invoice, the Town will have 10 business days to review each invoice and, at the Town's discretion, inspect the progress of the Work, to confirm that the Milestone was achieved.

9.2.1.3. If any Milestone Payment invoice is deemed deficient in any material respect by the Town, Peterson will have 30 business days after receipt of the Town's deficiency notice to correct such deficiencies and

to resubmit such invoice for payment. If any remaining or additional deficiencies are noted by the Town, the above process will repeat until the deficiencies are corrected.

9.2.2. Payment Retainage. For each Milestone Payment made pursuant to Paragraph 9.2.1, the Town shall withhold and retain five percent (5%) of each such payment amount until the date Phase II Final Acceptance is established pursuant to Paragraph 8.1.

9.2.3. Identification of Milestones. The Milestones for each segment of Phase II of the System are as follows (for the avoidance of doubt, the Milestones may be completed in such order as Peterson may reasonably determine):

Section 1 – Manhole 1 to Manhole 12 (2,936 LF) = \$669,420
Section 2 – Manhole 12 to Manhole 22 (2,688 LF) = \$612,875
Section 3 – Manhole 22 to Manhole 32 (2,719 LF) = \$619,943
Section 4 – Manhole 32 to Manhole 44 (2,994 LF) = \$682,643

9.3. Payment of Balance of the Fixed Price. The Town shall reimburse Peterson the remaining portion of the Fixed Price of \$1,415,119 on a quarterly basis following the receipt of development permits and payment of the applicable pro rata fee for each of the properties in the Crosstrail North development as identified on Exhibit B, as follows:

9.3.1. Until the Town has paid to Peterson the amount set forth in Paragraph 9.3, the Town will pay Peterson an amount equal to the applicable pro rata fees established in the Phase II Resolution (or any amendment thereto) to the extent such fees are received by the Town from the owner or developer of each of the properties in the Northern Area of the Development, as identified on Exhibit B. Except as provided in Paragraph 9.3.2, the Town shall have no obligation to pay to Peterson any pro rata fees received by the Town from the owner or developer of any property in the Southern Area or the Unassigned Area of the Development, as identified on Exhibit B; and

9.3.2. Peterson acknowledges that, due to land use changes within the sewer shed as a result of re-zonings and development, the Town may revise the pro rata fees established pursuant to the Phase II resolution at any time following the Effective Date. If, at the time the Town revises the pro rata fees that were established in the Phase II Resolution, (a) the Town has not paid to Peterson the entire amount of the Fixed Price set forth in Paragraph 9.3, and (b) as a result of such revision to the pro rata fees, the revised pro rata fees for the undeveloped portion of the Northern Area of the Development would be insufficient to fully compensate Peterson for the unpaid portion of the Fixed Price set forth in Paragraph 9.3 (such amounts to be deemed “Stranded Development Costs”), then the Town will be responsible to pay to Peterson the Stranded Development Costs, with such payments to be made from pro rata fees actually received by the Town from the development of the Northern

Area, the Southern Area and the Unassigned Area of the Development (all as identified in Exhibit B).

9.3.3. Within fifteen (15) days following the end of each calendar quarter, the Town will pay Peterson an amount equal to all of the then-applicable pro rata fees paid to the Town (a) by an owner or developer of a property in the Northern Area of the Development during the prior calendar quarter and (b) to the extent the Town is responsible for payment of Stranded Development Costs in accordance with Paragraph 9.3.2, by an owner or developer of a property in the Northern Area, the Southern Area or the Unassigned Area of the Development during the prior calendar quarter.

9.4. Peterson shall be obligated to complete the Work and deliver the Phase II facilities as shown on the Phase II Plans to the Town as required herein, even in the event that actual costs to perform the Work and construct Phase II of the System exceed the Fixed Price.

9.5. The Town shall have no obligation to pay any contractor, supplier or service provider engaged by Peterson to perform the Work.

10. Operation and Maintenance

10.1. Upon Phase II Final Acceptance, the Town will operate and maintain Phase II of the System as part of its overall sewer system in accordance with standard utility operation and maintenance practices.

10.2. Peterson will have no responsibility for maintenance or operation of Phase II of the System after Phase II Final Acceptance.

11. Warranty

11.1. Peterson guarantees and warrants to the Town all work as follows:

11.1.1. That Peterson will provide all product and warranty information to the Town;

11.1.2. That all materials and equipment furnished under this Agreement will be new, in conformance with the Submittal Documents, and the best of its respective kind or equivalent unless otherwise specified;

11.1.3. That all Work will comply with or exceed industry standards and be free of omissions and faulty, poor quality, imperfect or defective materials or workmanship;

11.1.4. That where no standard is specified for such workmanship or materials, they shall be to industry standards;

- 11.1.5.** That all applicable Work shall be entirely watertight and leakproof in accordance with all applicable industry customs and practices;
- 11.1.6.** That the Work, including but not limited to, mechanical and electrical machines, devices and equipment shall be fit and fully usable for its intended and specified purpose and shall operate satisfactorily with ordinary care;
- 11.1.7.** That consistent with requirements of the Contract Documents, the Work shall be installed and oriented in such a manner as to facilitate unrestricted access for the operation and maintenance of fixed equipment consistent with the Phase II Plans; and
- 11.1.8.** That the Work will be free of abnormal or unusual deterioration that occurs because of poor quality materials, workmanship or unsuitable storage.
- 11.1.9.** All work not conforming to guarantees and warranties specified in the Contract Documents, including substitutions not properly approved and authorized, may be considered defective.
- 11.1.10.** The warranties set forth in this Article 11 and elsewhere in the Contract Documents shall survive Phase II Final Acceptance.
- 11.1.11.** If, within one year after the Phase II Final Acceptance or designated portion thereof or within one year after acceptance by the Town of designated equipment or within such longer period as may be prescribed by law or by the terms of the applicable special warranty required by the Contract Documents, any of the Work is found to be defective, not in accordance with the Contract Documents, or not in accordance with the guarantees and warranties specified in the Contract Documents, Peterson shall commence the correction within ten working days and shall diligently pursue the correction, or such other period as agreed, after receipt of written notice from the Town to do so.
- 11.1.12.** If at any time deficiencies in the Work are discovered that are found to have resulted from latent defects, gross mistakes, fraud or misrepresentation by Peterson, Peterson will be liable for replacement or correction of such Work or any damage that the Town has incurred, or will incur, related thereto, regardless of the time limit of any guarantees or warranty.
- 11.1.13.** Any materials or other portions of the Work, installed, furnished, or stored on site that are not of the character or quality required by the specifications shall be immediately removed and replaced by Peterson to the satisfaction of the Town when notified to do so by the Town.
- 11.1.14.** If Peterson fails to correct defective or nonconforming Work as required by Paragraph 3.7 the Town may elect to either correct such Work in accordance with 3.7 "Town's Right To Carry Out the Work" or remove and store materials and equipment at the expense of Peterson.

11.1.15. Peterson shall bear the cost of making good all work of the Town, separate contractors or others, destroyed or damaged by such correction or removal required under this Article or elsewhere in the Contract Documents.

12. Sewer Conveyance Capacity

12.1. In the event of any increase in sewer flows above those set forth for each property in the Development as set forth on Exhibit D, the Town will require the property owner responsible for the additional flow to upgrade Phase II to accommodate any additional flows.

13. Pro Rata for Phase I

13.1. Nothing in this Agreement shall alter or amend Peterson's, or any subsequent developer's or permit applicant's obligation, to pay the pro rata share to the Town for the Phase I construction costs for the entire Crosstrail Property. The pro rata share of the construction costs for Phase I as of January 2014 is established in the Phase I Resolution, as such costs have been revised by the Town Council as of the Effective Date.

13.2. For the avoidance of doubt, Peterson shall have no claim to any permit fee credits or reimbursement of construction costs for the areas relating to Phase I of the System.

14. Termination

14.1. Peterson Termination Right

14.1.1. Peterson may, upon at least thirty (30) days prior written notice to the Town, terminate this Agreement if the Town has not issued a Notice to Proceed by June 1, 2015. Notwithstanding such termination, Peterson will not be relieved of any responsibility for costs Peterson has incurred prior to such termination, nor will Peterson be entitled to any reimbursement or credits therefor. Peterson shall be relieved of any further responsibility for the construction and costs of Phase II of the System on and after the date of such termination.

14.1.2. Notwithstanding the above paragraph, in the event of termination by Peterson, Peterson shall not be relieved of its pro rata costs for Phase I or Phase II of the System.

14.2. Town Termination Right

14.2.1. The Town may, upon thirty (30) days written notice to Peterson, terminate, without prejudice to any right or remedy of the Town, the Agreement for default, in whole or in part, and may take possession of the Work and complete the Work by contract or otherwise if Peterson refuses or fails to prosecute the Work or any separable part thereof with such diligence as will ensure the Substantial Completion of the Work within the Contract Time pursuant to Paragraph 4.3.2.1, or

fails to meet any milestones established in the Contract Documents or fails to substantially complete the Work within this period. Prior to issuing the notice of termination, the Town shall provide Peterson with the thirty (30) day opportunity to cure as set forth in Paragraph 15.

14.2.2. Upon termination of this Agreement under this Article, Peterson shall remove all of its employees and property from the project area in a smooth, orderly, and cooperative manner.

14.2.3. The right of Peterson to proceed shall not be terminated under Paragraph 14.2 because of any delays in the completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of Peterson or force majeure events.

14.3. General Termination Provisions

14.3.1. Upon termination under Paragraph 14.1 or 14.2, Peterson shall:

14.3.1.1. Stop Work under the Agreement on the date and to the extent specified in the notice of termination;

14.3.1.2. Place no further purchase orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the Work under the Agreement that is not terminated;

14.3.1.3. Terminate all purchase orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination;

14.3.1.4. At the option of the Town, assign to the Town in the manner, at the times and to the extent directed by the Town, all of the rights in the contracts so terminated, in which case, the Town shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such purchase orders and subcontracts;

14.3.1.5. Settle all outstanding liabilities and all claims arising out of such termination of purchase orders and subcontracts, with the approval or ratification of the Town, to the extent it may require, which approval or ratification shall be final for all the purposes of this Article;

14.3.1.6. Provide the Town with the total costs for the Work up to the issuance of the Stop Work order. In accordance with the provisions of Agreement, the Town shall reimburse Peterson for all costs incurred prior to the Stop Work Order, not to exceed the Fixed Price;

14.3.1.7. Transfer title to and deliver to the entity or entities designated by the Town, in the manner, at the times and to the extent directed by the Town to the extent specifically produced or specifically acquired by Peterson for the

performance of such portion of the Work as has been terminated, the following:

14.3.1.7.1. The fabricated or unfabricated parts, Work in progress, partially completed supplies and equipment, materials, parts, tools, dies, jigs, and other fixtures, completed work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated by the notice of termination; and

14.3.1.7.2. The completed or partially completed plans, drawings, shop drawings, submittals, information, releases, manuals, and other property related to the Work and which, if the Agreement had been completed, would have been required to be furnished to the Town.

14.3.1.8. Use its best efforts to sell, in the manner, at the times, to the extent and at the price or prices directed or authorized by the Town, any property of the types referred to in Paragraph 14.3.1.7; provided, however, that Peterson:

14.3.1.8.1. Shall not be required to extend credit to any buyer; and

14.3.1.8.2. May acquire such property under the conditions prescribed by and at a price or prices approved by the Town; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Town to Peterson under the Agreement or shall otherwise be credited to the Fixed Price covered by the Agreement or paid in such other manner as the Town may direct;

14.3.1.9. Complete performance of such part of the Work as shall not have been terminated by the notice of termination; and

14.3.1.10. Take such action as may be necessary, or as the Town may direct for the protection and preservation of the property related to the Agreement that is in the possession of Peterson and in which the Town has or may acquire an interest.

15. Default

If the Town or Peterson fails to keep, perform, or abide by any material term, condition, or covenant of this Agreement and does not cure such default within thirty (30) days after written notice thereof or, if such default cannot be cured in such period, does not within thirty (30) days commence with diligence and dispatch such act or acts as shall be necessary to cure the default and shall not cure such default within a reasonable time, then the non-defaulting party shall be entitled to pursue the remedies set forth herein.

16. Remedies for Default and Failure to Cure

16.1. If Peterson defaults in its obligations under this Agreement, Peterson shall not be entitled to receive any further reimbursement, credit or Performance and Payment

Bond reduction until the Work is completed and Town shall have the right to carry out the Work as described in Section 3.7.1.

16.2. If the Town defaults on its obligations under this Agreement, Peterson will have the option, at its sole discretion, to either terminate this Agreement or sue for specific performance.

17. Hold Harmless and Indemnification

17.1. To the fullest extent permitted by law, Peterson shall, at its sole cost and expense, indemnify, defend, and hold harmless the Town, its agents, representatives, employees, successors and assigns from and against all claims, actions, judgments, costs, liabilities, penalties, damages, losses and expenses, including but not limited to, attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, action, judgment, cost, liability, penalty, damage, loss or expense:

17.1.1. Is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom; and

17.1.2. Is caused in whole or in part by any negligent act or omission of Peterson, any Subcontractor or supplier, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

Peterson shall not be obligated to indemnify the Town hereunder for any damages or injuries, including death, the proximate cause of which is the sole negligence of the Town, consistent with Va. Code § 11-4.1.

Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any party or person described in this Paragraph 17.2.

17.2. In any and all claims against the Town or any of its agents, representatives, or employees by any employee of Peterson, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 17.2 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Peterson or any subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

17.3. No provision of Paragraph 17.2 shall give rise to any duties on the part of the Town, or any of its agents, representatives or employees.

17.4. The obligations of Peterson under Paragraph 17.2 shall not extend to the liability of the Town or its agents or employees arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or

specifications, or (b) the giving of or the failure to give directions or instructions by Town, its agents or employees provided such giving or failure to give is the primary cause of injury or damage.

18. Insurance and Bonds

18.1. Bonds

- 18.1.1.** Peterson shall furnish to the Town a performance bond (the "Performance Bond") in the sum of the Fixed Price executed by a surety authorized to do business in Virginia, payable to the Town of Leesburg, Virginia, or such other entity as may be identified in the Agreement, and conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications, and conditions of the Contract Documents. Such Performance Bond shall be in the form set forth on Exhibit E.
- 18.1.2.** Peterson shall furnish to the Town a payment bond (the "Payment Bond") in the amount of the Fixed Price payable to the Town of Leesburg or such other entity as may be identified in the Agreement, and executed by a surety authorized to do business in Virginia. Such bond shall be conditioned on the prompt payment to all claimants who have and fulfill contracts to supply labor or materials to Peterson for all material furnished or labor supplied or performed in the prosecution of the Work. "Labor and materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the project site. Such Payment Bond shall be in the form set forth on Exhibit F.
- 18.1.3.** Peterson shall ensure that all sureties providing bonds for the Project will give written notice to the Town, at least thirty days prior to expiration or termination of the bond(s).
- 18.1.4.** If the surety on any bond furnished by Peterson is declared bankrupt or becomes insolvent or its right to do business is terminated in Virginia, Peterson shall within thirty (30) days thereafter substitute another bond and surety, both of which shall be acceptable to the Town.
- 18.1.5.** If at any time, the rating for Peterson's surety that issued the bonds drops below Best's Key Rating Guide of A-, Peterson shall within thirty (30) days after notice from the Town to do so, substitute an acceptable bond(s) in such form and sum and signed by such other sureties as may be satisfactory to the Town. The premium on such bond(s) shall be paid by Peterson. No further payment shall be deemed due nor shall be made until the new sureties have been qualified and accepted by the Town.
- 18.1.6.** If more than one surety executes a bond, each shall be jointly and severally liable to the Town for the entire amount of the bond.

18.2. Insurance.

- 18.2.1.** At least thirty (30) days prior to the commencement of the Work, Peterson or its contractor shall procure and maintain in full force and effect with responsible insurance providers (as evidenced by an AM Best rating of A-/VIII or better) the following insurance in at least the minimum amounts specified below, until Phase II Final Acceptance. Following the Phase II Final Acceptance, Peterson shall provide evidence of the insurance required herein at any time during the warranty period that Peterson is performing warranty work.
- 18.2.2. Workers' Compensation and Employers' Liability.** Workers' compensation insurance in compliance with appropriate federal and state laws, and Employers' Liability Insurance with limit of not less than \$500,000 for bodily injury per occurrence and \$500,000 in the aggregate, and \$500,000 disease policy limit.
- 18.2.3. Commercial General Liability.** Commercial general liability insurance, occurrence form, including, but not limited to, contractual coverage for all of the provisions of this Agreement, with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; \$1,000,000 Products and Completed Operations aggregate; \$1,000,000 Personal Injury and Advertising injury per offense.
- 18.2.4. Automobile Liability.** Automobile liability insurance, including vehicles owned, hired and non-owned, with a combined single limit of not less than \$1,000,000 per accident.
- 18.2.5. Excess Liability.** Other than the policies for Workers' Compensation and Employers Liability insurance, the liability limits may be satisfied through a combination of primary and excess (or umbrella) coverage with a combined single limit of not less than \$10,000,000.
- 18.2.6.** The Town shall be furnished with a certificate of insurance as evidence that the foregoing insurance is in effect. Peterson shall provide the Town with thirty (30) days' notice prior to the cancellation or material change of any such coverage. The Town shall be named as an additional insured with respect to Peterson's activities under this Agreement under the liability coverage required by this Article 18. Maintenance by Peterson of the insurance required herein shall in no way be interpreted as relieving Peterson of any other obligations it may have under this Agreement.
- 18.2.7.** Peterson's insurance coverage shall be primary coverage without right of contribution from any other insurance carried by the Town. Insurance maintained by the Town is for the exclusive benefit of the Town and shall not inure to the benefit of Peterson. All policies procured by Peterson, other than for Worker's Compensation, shall require the insurer to waive subrogation against the Town.

19. Dispute Resolution

19.1. In the event of any dispute between the Parties, the Parties shall attempt first to resolve the dispute by informal negotiation between their staff members. If the dispute cannot be resolved by informal staff negotiation, then each of the Parties shall promptly send the other a detailed letter, describing the dispute and the basis for their respective positions. If the dispute is still not resolved, then each party will designate a senior manager. The senior managers will confer within ten (10) business days and attempt to resolve the dispute. If the senior managers are unsuccessful in resolving the dispute, then each Party will have the right to resolve the dispute through litigation (or enter into any such method of alternative dispute resolution as the Parties may at the time agree), provided, however, that any litigation shall be brought in the state courts of the Commonwealth of Virginia located in Loudoun County.

20. Assignment

20.1. This Agreement may be assigned by Peterson to any party that acquires all or some portion of its interest in the Development; provided such party (i) has technical capabilities and experience similar to or greater than Peterson, (ii) has a credit rating (if any) and financial resources similar to or greater than Peterson, and (iii) is otherwise acceptable to the Town in its sole discretion. No other assignment shall be made by either party without the prior written consent of the other party, which shall not be unreasonably withheld, conditioned or delayed.

20.2. Peterson may also assign the right to receive its pro-rata reimbursement as set forth in this Agreement to any third party without the Town's consent or approval. Peterson, however, shall notify the Town of such assignment in writing.

21. Claims for Damages; Consequential Damages

21.1. Should Peterson suffer injury or damage to person or property because of any act or omission of the Town or of any of its employees, agents or others for whose acts either is legally liable, claim shall be made in writing to the Town within thirty days after the first knowledge of such injury or damage; otherwise, Peterson shall have waived any and all rights it may have against the Town, or its employees, representatives and agents.

21.2. Neither the Town nor Peterson, nor their subcontractors or suppliers of any tier, shall be liable to the other for any consequential, special, incidental, indirect or punitive losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including losses of use, profits, business, reputation or financing; provided, however, nothing herein shall be deemed to limit a Party's liability to the other party for indemnity obligations under this Agreement.

22. Protections of Persons and Property

The Town is not responsible for the means, methods, techniques, sequences or procedures utilized by Peterson, or for safety precautions and programs in connection with the Work. Peterson shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. This requirement applies continuously throughout the Agreement, until Phase II Final Acceptance, and is not limited to regular working hours. Peterson shall ensure that the Work is performed in accordance with the Safety Precautions attached hereto as Exhibit I.

23. Emergencies

23.1. In any emergency affecting the safety of persons or property, Peterson shall act to prevent threatened damage, injury, or loss to the Town. Peterson shall notify the Town of the situation and all actions taken immediately thereafter. If, in the opinion of Peterson, immediate action is not required, Peterson shall notify the Town of the emergency situation and take necessary steps to remedy the emergency. If any loss, damage, injury or death occurs that could have been prevented by Peterson's prompt and immediate action or the emergency resulted from acts or omissions of Peterson, or anyone directly or indirectly employed by Peterson, or by anyone whose acts for which Peterson is liable, Peterson shall defend, fully indemnify and hold harmless the Town (including attorneys' fees) from all actions resulting from the emergency. Any additional compensation or extension of time claimed by Peterson on account of emergency work shall be determined as provided in Article 5 of this Agreement.

23.2. Prior to commencing the Work and at all times during the performance of the Work, Peterson shall provide the Town with two, 24-hour emergency phone numbers where its representatives can be contacted.

24. Disclaimer of Third Party Beneficiaries

24.1. This Agreement is solely for the benefit of the Parties and their respective successors or assigns, and no right or cause of action shall accrue to or for the benefit of any third party not a party hereto or a successor or assign of a party hereto.

25. Peterson's Representations

25.1. By entering into this Agreement with the Town, Peterson represents and warrants the following, together with all other representations and warranties in the Contract Documents:

25.1.1. That it is experienced in and competent to perform the type of work required and to furnish the plant, materials, supplies or equipment to be so performed or furnished by it;

25.1.2. That it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to initiate and complete the Work required under the Agreement;

- 25.1.3.** That it is familiar with all laws, ordinances, permits, regulations and resolutions that may in any way affect the Work or those employed therein, including but not limited to any special laws or regulations related to contractor licenses and/or registrations for the Work or any part thereof;
- 25.1.4.** That such temporary and permanent work required by the Contract Documents that is to be done by it will be satisfactorily constructed and fit for use for its intended purpose and that such construction will not injure any person, or damage any property;
- 25.1.5.** That it will fully comply with all requirements of the Contract Documents;
- 25.1.6.** That it will perform the Work in a skillful manner consistent with good workmanship, sound business practice, and in the most expeditious and economical manner consistent with the best interests of the Town;
- 25.1.7.** That it will furnish efficient business administration and experienced superintendence and an adequate supply of workers, equipment, tools, and materials at all times;
- 25.1.8.** That it has carefully reviewed the Work required and that the Work can be planned and executed in a normal and orderly sequence and be reasonably scheduled so as to insure completion of the Work in accordance with the Contract Documents, allowing for normal and reasonably foreseeable weather, labor and other delays, interruptions and disruptions of the Work at the site designated;
- 25.1.9.** That it will complete the Work within the Contract Time and all portions thereof within any required Agreement milestones and any applicable extensions thereunder;
- 25.1.10.** That the Fixed Price is based upon the labor, materials, systems and equipment required by the Contract Documents, without exception;
- 25.1.11.** That it does not and will not during the performance of the Agreement violate the provisions of the Federal Immigration Reform and Control Act of 1986, as amended, which prohibits the employment of illegal aliens, and Federal and State employment and wage hour laws;
- 25.1.12.** That it has taken steps reasonably necessary to ascertain the nature and locations of the Work of the Agreement, has investigated and satisfied himself as to the general and local conditions which can affect the Work or its cost, including but not limited to: conditions bearing upon transportation, disposal, handling, and storage of materials; the availability of labor, water, electric power, and roads; uncertainties of weather, river stages, tides, or similar physical conditions at the site; the conformation and conditions of the ground; and the character of equipment and facilities needed before and during work performance; and

25.1.13. That no employee of the Town shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom which is not available to the general public.

26. Severability

26.1. If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the Parties are not materially prejudiced and if the intentions of the Parties can continue to be effective. To that end, this Agreement is declared to be severable.

27. Binding Upon Successors

27.1. This Agreement shall be binding upon and shall inure to the benefit of the successors or assigns of the Parties.

28. Applicable Law; Venue

28.1. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the Commonwealth of Virginia, without regard to any conflict of laws principles.

28.2. Any litigation shall be brought in the state courts of the Commonwealth of Virginia located in Loudon County, Virginia.

29. Notices

29.1. Unless otherwise specified in this Agreement, all notices or requests shall be in writing and shall be given by hand delivery or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Town:

Town of Leesburg
Attn: Town Manager
25 West Market Street
Leesburg, VA 20176
(703)-771-2750

With a copy to:

Town of Leesburg
Attn: Department of Utilities
1385 East Market Street
Leesburg, VA 20175
(703) 771-2700

If to Peterson:

Peterson Companies
Attention: Nancy McGrath
12500 Fair Lakes Circle
Fairfax, VA 22033

With a copy to:

Jonathan Rak
McGuireWoods, LLP
1750 Tysons Boulevard, Suite 1800
Tysons, VA 22102

or to such other persons and places as the Parties may specify by notice. The effective date of any notice or request shall be the date of receipt if delivered by hand, or the postmarked date thereof.

30. Amendment

30.1. This Agreement may be amended or modified on the agreement of both parties and documented in a writing signed by duly authorized representatives of both parties.

31. Counterpart Execution

31.1. The Parties may execute this Agreement in counterparts, which, in the aggregate, shall constitute one and the same instrument when signed by both Parties; and thereafter, each counterpart shall be deemed an original instrument as against any party who has signed it.

31.2. This Agreement, including all exhibits and attachments hereto (all of which are incorporated by reference herein), shall constitute the entire agreement between the Parties relating to the subject matter hereof, and supersedes and replaces any provisions on the same subject contained in any other agreement among the Parties, whether written or oral, prior to the Effective Date.

List of Exhibits:

- Exhibit A:** Town Council Resolutions
- Exhibit B:** Properties in the Sewer Shed – Crosstrail Northern Area, Crosstrail Southern Area and Miscellaneous/Unassigned Area
- Exhibit C:** RESERVED
- Exhibit D:** Projected Sewer Flow Rates.
- Exhibit E:** Identification of Required Phase II Easements
- Exhibit F:** Form of Performance Bond
- Exhibit G:** Form of Payment Bond
- Exhibit H:** Form of Maintenance Bond
- Exhibit I:** Safety Precautions

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, each Party hereto represents that it is duly authorized to enter into this Agreement and has caused its authorized representative to execute this Agreement as of the date first above written.

TOWN OF LEESBURG

By: _____

Name: _____

Title: _____

Date: _____

THE PETERSON COMPANIES L.C.

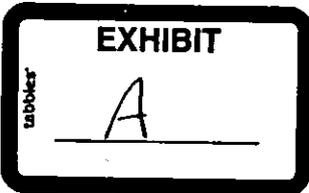
By: MVP Management, LLC, its Manager

By: _____

Name: _____

Title: _____

Date: _____



PRESENTED: March 24, 2015

RESOLUTION NO. _____

ADOPTED: _____

A RESOLUTION: AMENDING AND ESTABLISHING PRO-RATA FEES FOR THE PHASE I AND PHASE II LOWER SYCOLIN SANITARY SEWER CONVEYANCE SYSTEM

WHEREAS, Section 34-128 of the Town Code authorizes the Town to collect pro-rata fees for Town constructed sewer facilities necessitated, at least in part, by future subdivisions or development of land; and

WHEREAS, Resolution 2005-182 established a pro-rata fee for Area A (formally Section I) and Area B (formally Section II) for Lower Sycolin Creek Sanitary Sewer Conveyance Systems; and

WHEREAS, the Lower Sycolin Creek Sanitary Sewer Conveyance System has been divided into two construction phases (Phase I and Phase II); and

WHEREAS, the Town constructed a pump station, force main and associated Phase I gravity sewer main to provide sewer service to a portion of the Lower Sycolin Creek sewer shed properties; and

WHEREAS, the actual cost to date of engineering and construction Phase I and engineering Phase II of the conveyance system is \$5,329,878.40; and

WHEREAS, the fixed construction cost of Phase II of the sewer conveyance system is \$4,000,000.00 per attached sewer construction agreement; and

WHEREAS, it has been determined that approximately 12% of the cost of the design and construction related to Phase I of system is for the benefit of the existing customers and the remaining 88% is for the benefit of property owners of undeveloped lands in the Lower Sycolin Sewer shed; and

A RESOLUTION: CONSTRUCTION OF PHASE II LOWER SYCOLIN GRAVITY MAIN AND AUTHORIZING THE TOWN MANAGER TO PROCURE THESE SERVICES

WHEREAS, it has been determined that the costs for the design and construction related to Phase II of system is for 100% of the benefit of property owners of undeveloped lands in the Lower Sycolin Sewer shed; and

WHEREAS, the identification of the properties in the tables that follow is merely for purposes of identifying properties which may benefit from this capital project and is in no way a commitment, on the part of Town Council, to extend utilities to properties outside the Town corporate boundaries; and

WHEREAS, the following allocation for Phase I have been determined based on properties and uses subject to the Phase I pro-rata and has been adjusted accordingly to actual engineering and construction costs of \$5,329,878; and

Construction Project	Total	Area A %	Area A Share	Area B %	Area B Share
Lower Sycolin Pump Station	\$2,134,000	26%	\$552,120	74%	\$1,581,880
Lower Sycolin Force Main	\$855,568	26%	\$221,357	74%	\$634,211
Airport Gravity Sanitary Sewer (Phase I)	\$1,386,663	100%	\$1,386,663	0%	\$0
Engineering Design & SDC's for Pump Station, FM, Phases I & II	\$953,647	26%	\$246,733	74%	\$706,914
Total	\$5,329,878		\$2,406,874		\$2,923,005

A RESOLUTION: CONSTRUCTION OF PHASE II LOWER SYCOLIN GRAVITY MAIN AND AUTHORIZING THE TOWN MANAGER TO PROCURE THESE SERVICES

WHEREAS, the following allocations for Phase II have been determined, based on properties and uses subject to the pro-rata Phase II and has been established based on the fixed construction cost of \$4,000,000 per the sewer construction agreement with Peterson Companies; and

Construction Project	Total	Area A %	Area A Share	Area B %	Area B Share
Cochran Mill Gravity Sanitary Sewer Phase II	\$4,000,000	0%	\$0	100%	\$4,000,000
Total	\$4,000,000		\$0		\$4,000,000

WHEREAS, the following table demonstrates costs assigned to each property based on the most current available data for Phase I Pro-Rata; and

Area A Development	% of Sector for Phase I	Phase I Pro-Rata Share (2005)	Phase I Pro-Rata Share (2015 Cost Index)
Existing Town Customers	44%	\$1,072,369	Not Recoverable
Loudoun County	12%	\$285,965	\$375,691
Tuscarora Crossing	43%	\$1,024,709	\$1,346,226
Cochran Mill Road (Industrial Plant)	1%	\$23,830	\$31,308
Total	100%	\$2,406,874	\$1,753,224

Area B Development	% of Sector for Phase I	Phase I Pro-Rata Share (2005)	Phase I Pro-Rata Share (2015 Cost Index)
Compass Creek (Northern including Town Parcels)	35%	\$1,034,100	\$1,363,480
Crosstrail (Southern)	50%	\$1,459,608	\$1,924,522
Misc. Property (Unassigned Area)	15%	\$429,297	\$566,036
Total	100%	\$2,923,005	\$3,854,038

A RESOLUTION: CONSTRUCTION OF PHASE II LOWER SYCOLIN GRAVITY MAIN AND AUTHORIZING THE TOWN MANAGER TO PROCURE THESE SERVICES

WHEREAS, the following table demonstrates costs assigned to each property based on the most current available data for Phase II Pro-Rata;

Area B Development	% of Sector for Phase II	Phase II Pro-Rata Share (2014)
Compass Creek (Northern including Town Parcels)	35%	\$1,415,119
Compass Creek (Southern)	50%	\$1,997,408
Misc. Property (Unassigned Area)	15%	\$587,473
Total	100%	\$4,000,000

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

SECTION I. The Lower Sycolin Creek Sanitary Sewer Conveyance System Phase I Pro-rata fee is hereby reestablished and adjusted to reflect actual engineering and construction costs, effective upon passage, at a rate of \$11.92 per gallon per day of estimated usage for Phase I, Area A properties (previously \$8.76 per gallons per day) and \$5.05 per gallon per day for Area B properties (previously \$9.24 per gallons per day).

SECTION II. The Lower Sycolin Creek Sanitary Sewer Conveyance System Phase II Pro-Rata fee is hereby established to reflect the fixed construction cost, effective upon passage, at a rate of \$6.91 per gallon per day of estimated usage for Area B properties (previously \$9.24 per gallons per day). Therefore, Area B properties are subject to both Phase I (Pump station, force main, design and engineering costs) and Phase II (gravity main) Pro-rata fees.

SECTION III. The fees as specified in Area A and Area B shall be paid prior to the issuance of a Zoning Permit and concurrently with payment of all other required off-site and availability fees for new connections or increased use of existing connections to the Lower Sycolin Creek Sanitary Sewer Conveyance System.

A RESOLUTION: CONSTRUCTION OF PHASE II LOWER SYCOLIN GRAVITY MAIN
AND AUTHORIZING THE TOWN MANAGER TO PROCURE THESE
SERVICES

SECTION IV. The fee shall be adjusted by the percentage increase or decrease in Engineering News Record Construction Cost Index value at the time of application. The Construction Cost Index value from which the increase or decrease shall be measured is 7563 for Phase I and 9962 for Phase II.

SECTION V. The fees established herein shall be calculated based on the gallons per day usage per establishment as outlined on Drawing SD-2 (Average Daily Sewage Flows) in the Town's Design and Construction Standards Manual.

SECTION VI. The fees established herein shall run with the property and the Town Manager shall maintain for public inspection a record of properties subject to these fees.

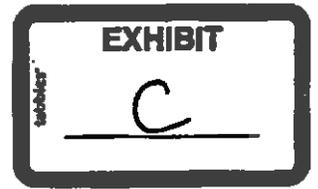
PASSED this _____ day of March 2015.

Kristen C. Umstattd, Mayor
Town of Leesburg

ATTEST:

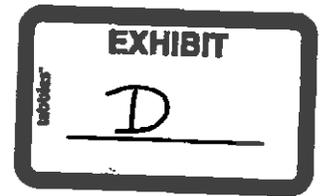
Clerk of Council





RESERVED

Lower Sycolin Sewer Pro-Rata (Revised Flow for Crosstrail per Peterson 1/20/15)



Phase I Construction Project	Total
Lower Sycolin Pump Station	\$2,134,000.00
Lower Sycolin Force Main	\$1,150,820.14
Airport Gravity Sanitary Sewer (Phase I)	\$1,095,792.26
Engineering Design & SDC's for Pump Station, FM, Phases I & II	\$949,266.00
Total	\$5,329,878.40

Flows

Sector I Development	Estimated Flow gpd
Town	90,000
Loudoun County	24,000
Tuscarora Crossing	86,000
Cochran Mill Road (Industrial Plant)	2,000
Total Sector I Flows (gpd)	202,000

Sector II Development	Estimated Flow gpd
Crosstrail (Northern including Town Parcels)	204,750
Crosstrail (Southern)	289,000
Misc Property	85,000
Total Sector II Flows (gpd)	578,750

Total Flow of Sectors I and II to the Pump Station and Forcemain		780,750
% of Total Flow from Sector I to the Pump Station and Forcemain	26%	202,000
% of Total Flow from Sector II to the Pump Station and Forcemain	74%	578,750

Based on % of Total Flow the Pro-Rata share to each sector is as follows:

Construction Project	Total	Sector I %	Sector I Share	Sector II %	Sector II Share
Lower Sycolin Pump Station	\$2,134,000	26%	\$552,120	74%	\$1,581,880
Lower Sycolin Force Main	\$855,568	26%	\$221,357	74%	\$634,211
Airport Gravity Sanitary Sewer (Phase I)	\$1,386,663	100%	\$1,386,663	0%	\$0
Engineering Design & SDC's for Pump Station, FM, Phases I & II	\$953,647	26%	\$246,733	74%	\$706,914
Total	\$5,329,878		\$2,406,874		\$2,923,005

The Pro-Rata share per development within each sector is as follows:

Sector I Development	% of Sector	Pro-Rata Share (2005)	Pro-Rata Share (2015 Cost Index)
Town	45%	\$1,072,369	Not Recoverable
Loudoun County	12%	\$285,965	\$375,691
Tuscarora Crossing	43%	\$1,024,709	\$1,346,226
Cochran Mill Road (Industrial Plant)	1%	\$23,830	\$31,308
Total	100%	\$2,406,874	\$1,753,224

Sector II Development	% of Sector	Pro-Rata Share (2005)	Pro-Rata Share (2015 Cost Index)
Crosstrail (Northern including Town Parcels)	35%	\$1,034,100	\$1,363,480
Crosstrail (Southern)	50%	\$1,459,608	\$1,924,522
Misc Property	15%	\$429,297	\$566,036
Total	100%	\$2,923,005	\$3,854,038

Phase I 2005 Pro-Rata Rate to be re-established (Calculate Based on ENR Index for 2005):	Total Cost	Total gpd	Pro-Rata Rate (2005)	Pro-Rata Rate (2015 Cost Index)
Sector I	\$2,406,873.71	202,000	\$11.92 per gpd	\$15.71 per gpd
Sector II	\$2,923,004.69	578,750	\$5.05 per gpd	\$6.66 per gpd

1/15 ENR Construction Index: 9971.96

Phase II Construction Project	Total
Cochran Mill Gravity Sanitary Sewer Phase II	\$4,000,000.00
Total	\$4,000,000.00

Sector II Development	Estimated Flow gpd
Crosstrail (Northern Including Town Parcels)	204,750
Crosstrail (Southern)	289,000
Misc Property	85,000
Total Sector II Flows (gpd)	578,750

Based on % of Total Flow the Pro-Rata share to each sector is as follows:

Construction Project	Total	Sector I %	Sector I Share	Sector II %	Sector II Share
Cochran Mill Gravity Sanitary Sewer Phase II	\$4,000,000	0%	\$0	100%	\$4,000,000
Total	\$4,000,000		\$0		\$4,000,000

The Pro-Rata share per development within each sector is as follows:

Sector II Development	% of Sector	Pro-Rata Share (2015)
Crosstrail (Northern Including Town Parcels)	35%	\$1,415,119
Crosstrail (Southern)	50%	\$1,997,408
Misc Property	15%	\$587,473
Total	100%	\$4,000,000

New Phase II Pro-Rata Rate to be established (Calculate Based on 2014 ENR Index at Adoption)	Total Cost	Total gpd	Pro-Rata Rate (2015)
Sector II	\$4,000,000.00	578,750	\$6.91 per gpd

Note: Change in density of any parcels within both sectors could require a reevaluation of established pro-rata

1/15 ENR Construction Index: 9971.96



VIRGINIA PERFORMANCE BOND

BOND NO. _____

AMOUNT:\$ _____

KNOW ALL MEN BY THESE PRESENTS, that _____

of _____

hereinafter called the CONTRACTOR (Principal), and _____

_____ a corporation duly organized and existing under and by virtue of the laws of the State of _____, hereinafter called the SURETY, and authorized to transact business _____ within the Commonwealth of Virginia, as SURETY, are held and firmly bound unto The Town of Leesburg as OWNER (Obligee), in the sum of:

_____ DOLLARS (\$ _____), lawful money of the United States of America, for the payment of which, well and truly be made to the OWNER. The CONTRACTOR and the SURETY bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents as follows:

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

WHEREAS, the CONTRACTOR has executed and entered into a certain Contract hereto attached with _____, naming the OWNER as beneficiary, dated this _____ day of _____, 20 _____,

for: _____

NOW, THEREFORE, the CONTRACTOR shall at all times duly, promptly, and faithfully perform the Contract and any alteration in or addition to the obligations of the CONTRACTOR arising there under, including the matter of infringement, if any, of patents or other proprietary rights, and shall assure all guarantees against defective workmanship and materials, including the guarantee period following final completion by the CONTRACTOR and final acceptance by the OWNER and comply with all covenants therein contained in the Specifications, Drawings, and other Documents constituting a part of the Contract required to be performed by the CONTRACTOR, in the manner and within the times provided in the Contract, and shall fully indemnify and save harmless the OWNER from all cost and damage which it may suffer by reason or failure so to do, and shall fully reimburse and repay it all outlay and expenses which it may incur in making good any default, and reasonable counsel fees incurred in the prosecution of

or defense of any action arising out of or in connection with any such default, then this obligation shall be void; otherwise to remain in full force and effect.

Furthermore, the SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract Documents or to the work to be performed there under, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract Documents.

PROVIDED, FURTHER that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, the above parties bounded together have executed this instrument this _____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative, pursuant to authority of its governing body.

CONTRACTOR

By _____ (Seal)

Attest

SURETY

By _____ (Seal)

Attest

NOTE: Date of bond must not be prior to date of Contract. If CONTRACTOR is a partnership, all partners should execute bond.

IMPORTANT: The SURETY named on this bond shall be one who is licensed to conduct business in the Commonwealth of Virginia, and named in the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act for the SURETY at the time of the signing of this bond.



VIRGINIA PAYMENT BOND

BOND NO. _____

AMOUNT: \$ _____

KNOW ALL MEN BY THESE PRESENTS, that _____

_____ of _____

hereinafter called the CONTRACTOR (Principal), and _____

_____ a corporation duly organized and existing under and by virtue of the laws of the State of _____, hereinafter called the SURETY, and authorized to transact business within the Commonwealth of Virginia; as SURETY, are held and firmly bound unto The Town of Leesburg hereinafter as "TOWN" (Obligee), in the sum of:

_____ DOLLARS (\$ _____), lawful money of the United States of America, for the payment of which, well and truly be made to the TOWN, the CONTRACTOR and the SURETY bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents as follows:

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

WHEREAS, the CONTRACTOR has executed and entered into a certain Contract hereto attached, with the TOWN, dated _____, 20 _____, for:

NOW, THEREFORE, if the CONTRACTOR shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in the Contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment, and tools consumed or used in connection with the construction of the work, and all insurance premiums on the work, and for all labor performed in the work, whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that the SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract Documents or to the work to be performed thereunder, or the Specifications accompanying the same, shall in any way affect its

obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract Documents.

PROVIDED, FURTHER that no final settlement between the TOWN and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, the above parties bounded together have executed this instrument this ____ day of _____, 20 _____, the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative, pursuant to authority of its governing body.

CONTRACTOR

By _____ (Seal)

Attest

SURETY

By _____ (Seal)

Attest

NOTE: Date of bond must not be prior to date of Contract. If CONTRACTOR is a partnership, all partners should execute bond.

IMPORTANT: The SURETY named on this bond shall be one who is licensed to conduct business in the Commonwealth of Virginia, and named in the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act for the SURETY at the time of the signing of this bond.



MAINTENANCE AGREEMENT & BOND

Leesburg, Virginia

_____, 20____
Date Name of Subdivision or Development

KNOW ALL MEN BY THESE PRESENTS:

That we, _____
(Name of Developer)

of _____, as principal,
(Address)

and _____, a corporation organized under the laws of the State of _____, and authorized to conduct business in the Commonwealth of Virginia, as Surety, is held and firmly bound upon the Town of Leesburg, Virginia in the sum of _____ Dollars, (\$ _____) lawful money of the United States for the payment of which will and truly be made, we bind ourselves, our heirs, devisees, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that:

WHEREAS, the Principal has heretofore on the _____ day of _____, _____, entered into a contract (PC-2) with said Town of Leesburg, Virginia for the installation and construction of all improvements and facilities as shown on the construction plans of the subdivision or development known as:

Said contract is incorporated herein by reference and made a part hereof as if fully set out herein.

WHEREAS, the improvements have been made and installed in said subdivision or development in accordance with said contract.

NOW, THEREFORE, If the said Principal shall faithfully perform the above mentioned contract by maintaining and keeping said work in good repair for the said maintenance period of one year as provided, including payment to all persons performing labor and furnishing materials in the prosecution of such work, then these presents shall be null and void, and have no further effect, but if default shall be made by the said Principal in the performance of its contract to so maintain and repair said work, then these presents shall have full force and effect and said Town of Leesburg, a municipal corporation of Virginia, shall have and recover from the said Principal and its Surety damage, or any expenses incident thereto, in the premises, as provided, and it is further understood and agreed that this obligation shall be a continuing one against the Principal and Surety hereon, and that successive recoveries may be had hereon for successive breaches until the full amount shall have been exhausted; and it is further understood that the obligation herein to maintain said work shall continue throughout said maintenance period, and the same shall not be changed, diminished, or in any manner affected from any cause during said time.

IN WITNESS WHEREOF, the said _____ Principal, has caused these presents to be executed by its _____, and attested by its _____, and the said _____ Surety, has caused these presents to be executed by its _____, and the said _____ has set his hands this _____ day of _____, 20____.

SURETY

PRINCIPAL

By: _____

By: _____

COUNTERSIGNED BY:

ATTEST: _____

By: _____
Resident Virginia Agent

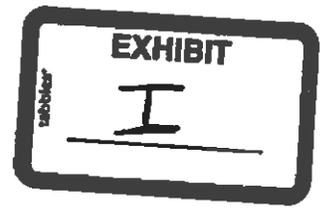


EXHIBIT "I"

Safety Precautions

Safety of Persons and Property.

1. Peterson shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss, to:
 - i. All employees on the Work and other persons who may be affected thereby;
 - ii. All the Work and materials and equipment to be incorporated therein whether in storage off the site, under the care, custody or control of Peterson, machinery and equipment. Peterson shall comply with, and ensure that Peterson's personnel and subcontracted personnel comply with all current applicable local, state and federal policies, regulations and standards relating to safety and health, including, by way of illustration and not limitation, the standards of the Virginia Occupational Safety and Health Administration for the General Industry and for the Construction Industry, the Federal Environmental Protection Agency Standards, the Manual of Accident Prevention in Construction published by the Associated General Contractors of America and the applicable standards of the Virginia Department of Environmental Quality.
 - iii. Other property at or adjacent to the Work, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
2. Peterson shall give all notices and comply with applicable laws, ordinances, permits, rules, regulations and orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.
3. Peterson shall at all times safely guard the Town's property from injury or losses in connection with this Agreement. It shall at all times safely guard and protect its own work and adjacent property as provided by law and the Contract Documents from damage. All security personnel, passageways, guard fences, lights, and other facilities required for protection of the property and the Work described herein shall be provided and maintained at Peterson's expense.
4. Peterson shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

5. When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, Peterson shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.
6. Peterson shall promptly remedy at its own cost and expense all damage or loss to any property referred to in Paragraph 1(ii) and 1(iii) of this Exhibit "I", to the extent that such damage or loss is caused by Peterson. Peterson shall perform such restoration by underpinning, repainting, rebuilding, replanting, or otherwise restoring as may be required or directed by the Town or shall make good such damage in a satisfactory and acceptable manner. In case of failure on the part of Peterson to promptly restore such property or make good such damage, the Town may, upon two days written notice, proceed to repair, rebuild or otherwise restore such property as may be necessary, and the cost thereof will be deducted from any monies due or to become due to Peterson under the Agreement.
7. Peterson shall give notice in writing at least 48 hours before breaking ground, to the Town, all persons, public utility companies, superintendents, inspectors or those otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads or otherwise, who may be affected by Peterson's operation, in order that they may remove any obstruction for which they are responsible and have a representative on site to see that their property is properly protected. Peterson is responsible for any damages or claims resulting from any excavation and shall defend, fully indemnify, and hold harmless the Town from all actions resulting from such work regardless of whether Peterson gave proper notice under this clause.
8. Peterson shall protect all utilities encountered while performing its work, whether indicated on the Contract Documents or not. Peterson shall maintain utilities in service until moved or abandoned. Peterson shall exercise due care when excavating around utilities and shall restore any damaged utilities to the same condition or better as existed prior to starting the Work, at no cost to the Town. Peterson shall maintain operating utilities or other services, even if they are shown to be abandoned on the drawings, in service until new facilities are provided, tested and ready for use.
9. Peterson shall return all improvements on or about the site and adjacent property that are not shown to be altered, removed or otherwise changed to conditions that are substantially the same as those that existed prior to starting work.
10. Peterson shall protect the Work, including but not limited to, the site, stored materials and equipment, excavations, and excavated or stockpiled soil or other material, intended for use in the Work, and shall take all necessary precautions to prevent or minimize damage to same or detrimental effect upon its performance, caused by or due to rain, run-off, floods, temperature, wind, dust, sand, and flying debris. For example, but not by way of limitation, Peterson shall, when necessary, utilize temporary dikes, channels or pumping to carry-off, divert or drain water, and as necessary tie-down or otherwise secure the Work and employ appropriate covers and screens.

11. Peterson shall be responsible for the prevention of accidents and the protection of material, equipment and property.
12. Peterson shall not load or permit any part of the Work to be loaded so as to endanger the safety of the Work, persons or adjacent property.
13. Peterson has sole and complete responsibility for the correction of any safety violation and sole liability for the consequences of the violation. Peterson shall give prompt written notice of any safety violation to the Town.
14. Peterson shall provide, or cause to be provided, all technical expertise, qualified personnel, equipment, tools and material to safely accomplish the Work, specified to be performed by Peterson and subcontractor(s).
15. Peterson shall be responsible for the preservation of all public and private property, trees, monuments, etc., along and adjacent to the street and/or right-of-way, and shall use every precaution to prevent damage to pipes, conduits and other underground structures, curbs, pavements, etc., except those to be removed or abandoned in place and shall protect carefully from disturbance or damage all monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed. Any damage which occurs by reason of the operations under this Agreement shall be completely repaired by Peterson at Peterson's expense.
16. Peterson shall shore, brace, underpin, secure, and protect, as may be necessary, all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site that may be affected in any way by excavations or other operations connected with the Work contained in this Agreement. Peterson shall be responsible for the giving of any and all required notices to any adjoining or adjacent property owned or other party before commencement of any Work. Peterson shall indemnify and save the Town harmless from any damages on account of settlements or loss of all damages for which the Town may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.
17. Peterson shall identify to the Town at least one on-site person who is Peterson's competent, qualified, and authorized person on the worksite and who is, by training or experience, familiar with policies, regulations and standards applicable to the Work being performed. The competent, qualified and authorized person must be capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous or dangerous to employees, shall be capable of ensuring that applicable safety regulations are complied with, and shall have the authority and responsibility to take prompt corrective measures, which may include removal of Peterson's personnel from the work site.
18. Peterson shall provide to the Town, a copy of Peterson's or its general contractor's written safety policies and safety procedures applicable to the Work within seven (7) days after the issuance of the Notice to Proceed.

DRAFT

Compass Creek Phase 1 (Northern Section)

Building	Use	Area (SF)	Flow Rate (GPD/SF)	Total GPD
01	Office	100,000	0.10	10,000
02	Office	100,000	0.10	10,000
03	Office	25,000	0.10	2,500
04	Office	100,000	0.10	10,000
05	Office	75,000	0.10	7,500
S1	Office/Pharmacy	45,000	0.10	4,500
S2	Office/Restaurant	10,000	0.10	1,000
S3	Gas/Convenience	5,000	0.10	500
S4	Day Care	11,000	0.10	1,100
S5	Bank	7,500	0.10	750
R1	Retail	10,000	0.30	3,000
R2	Retail	27,000	0.30	8,100
R3	Retail	22,000	0.30	6,600
R4	Retail	10,000	0.30	3,000
R5	Retail	19,000	0.30	5,700
R6	Retail	10,000	0.30	3,000
R7	Retail	60,000	0.30	18,000
R8	Retail	180,000	0.30	54,000
R9	Retail	125,000	0.30	37,500
RB1	Restaurant	250 Seats	10/Seat	2,500
RE2	Restaurant	250 Seats	10/Seat	2,500
H1	Hotel	100 (Rooms)	130/Room	13,000
Phase 1 Total = 204,750				

Compass Creek Phase 2 (Southern Section)

Building	Use	Area (SF)	Flow Rate (GPD/SF)	Total GPD
06	Office	75,000	0.10	7,500
07	Office	75,000	0.10	7,500
08	Office	75,000	0.10	7,500
09	Office	75,000	0.10	7,500
010	Office	75,000	0.10	7,500
011	Office	75,000	0.10	7,500
012	Office	75,000	0.10	7,500
013	Office	75,000	0.10	7,500
014	Office	75,000	0.10	7,500
015	Office	75,000	0.10	7,500
016	Office	75,000	0.10	7,500
017	Office	150,000	0.10	15,000
018	Office	150,000	0.10	15,000
019	Office	150,000	0.10	15,000
020	Office	25,000	0.10	2,500
021	Office	25,000	0.10	2,500
022	Office	25,000	0.10	2,500
023	Office	25,000	0.10	2,500
024	Office	25,000	0.10	2,500
025	Office	25,000	0.10	2,500
026	Office	25,000	0.10	2,500
027	Office	25,000	0.10	2,500
028	Office	25,000	0.10	2,500
029	Office	25,000	0.10	2,500
030	Office	20,000	0.10	2,000
031	Office	25,000	0.10	2,500
032	Office	25,000	0.10	2,500
033	Office	25,000	0.10	2,500
034	Office	25,000	0.10	2,500
035	Office	25,000	0.10	2,500

Compass Creek Phase 2 (Southern Section) Continued

Building	Use	Area (SF)	Flow Rate (GPD/SF)	Total GPD
036	Office	25,000	0.10	2,500
037	Office	25,000	0.10	2,500
038	Office	25,000	0.10	2,500
039	Office	25,000	0.10	2,500
040	Office	25,000	0.10	2,500
041	Office	25,000	0.10	2,500
042	Office	30,000	0.10	3,000
043	Office	100,000	0.10	10,000
044	Office	100,000	0.10	10,000
045	Office	100,000	0.10	10,000
046	Office	100,000	0.10	10,000
Building	Use	Area (Acres)	Flow Rate (GPD/Acre)	Total GPD
F1 through F16	Flex/Industrial	64.00	1,000	64,000

Phase 2 Total = 289,000

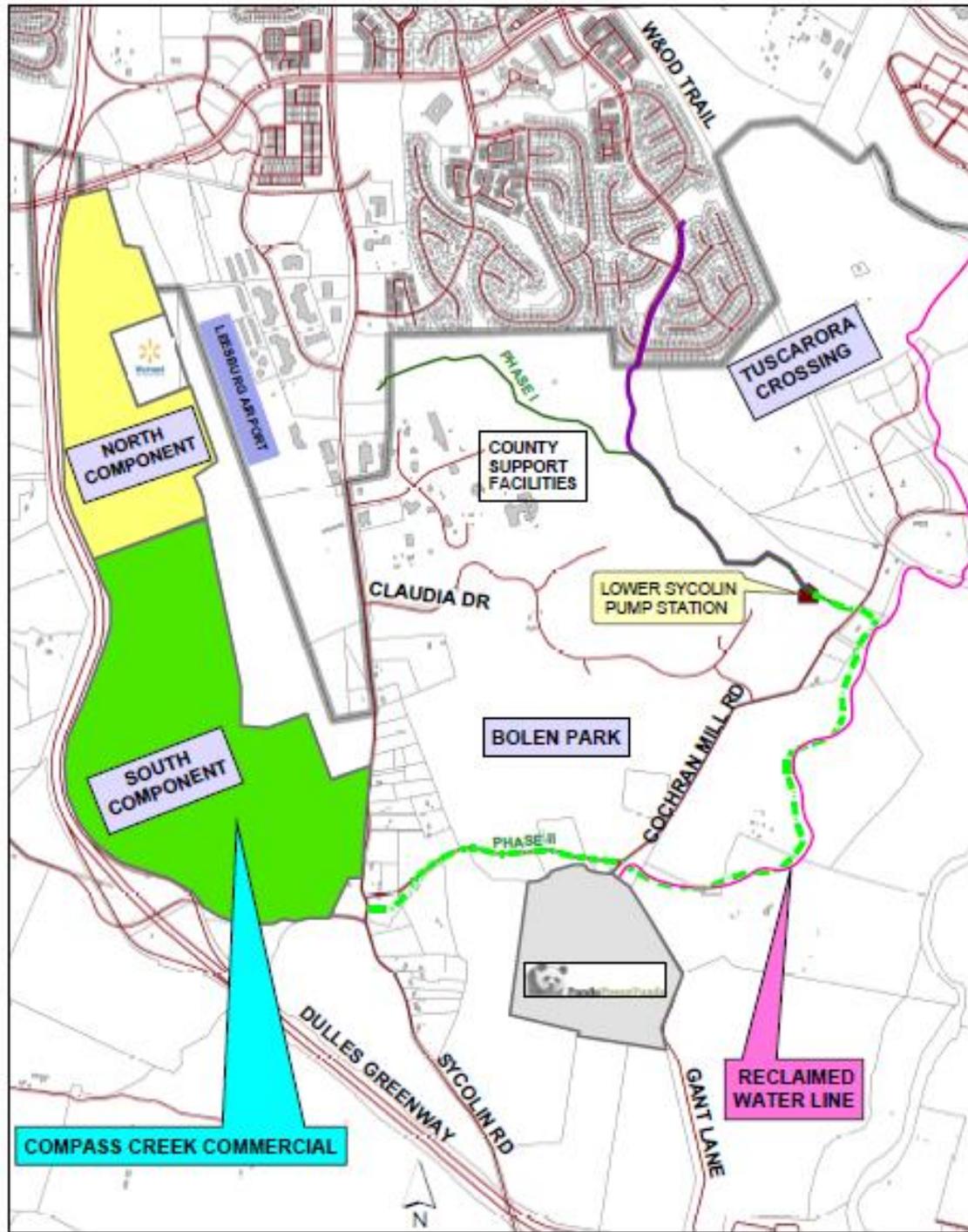
Lower Sycolin Sewer Conveyance System

Phase II Sewer Construction Agreement and Phase I and Phase II Pro-Ratas

March 24, 2015

Lower Sycolin Sewer Conveyance System

- * Phase I – Construction complete and system on line
 - * Airport Gravity Main
 - * Lower Sycolin Pump Station
 - * Force main to Kincaid Blvd.
 - * Airport Pump Station off line
- * Phase II
 - * Gravity main from Compass Creek to Pump Station
 - * Proposed Sewer construction agreement with Peterson Companies (Sole Source Procurement)



Impacted Parcels

- * Benefit from Pump Station and Force main – **ALL** properties
- * Benefit from Phase I Gravity Main
 - * Existing Town customers
 - * Loudoun County 92 acre tract
 - * A portion of Tuscarora Crossing
 - * Industrial plants, businesses and few residences along Cochran Mill Road
- * Benefit from Phase II Gravity Main
 - * Compass Creek
 - * Industrial plants, businesses and few residences along Cochran Mill Road

Overview of Sewer Construction Agreement with Peterson

- * \$4 Million Sewer Construction Agreement.
- * 2 independent cost estimates were prepared (+/- \$20,000).
- * Peterson will not be charging any overhead or fee for the management and oversight of the project.
- * Peterson is taking responsibility for the schedule and delivery obligations.
- * Peterson is uniquely positioned to execute the work in conjunction with Compass Creek onsite infrastructure.
- * The approval of the Agreement could resolve potential timing issues with the over blasting and construction of the reclaimed water line by Panda Energy.

Lower Sycolin Sanitary Phase II Highlights

- * 2002 – Sewer shed drainage study, system design and Sewer Master Plan included the Compass Creek development.
- * 2012 – Council committed to the Phase II gravity sewer main with resolutions for condemnation of land to obtain easements
- * Town will receive availability sewer fees when properties are developed.
- * Town will receive revenue from out of town sewer users for the majority of the properties developed.
- * Town will receive pro-rata fees to recover the cost of Phase I & II of the project when properties are developed.

2005 Lower Sycolin Sewer Pro-Ratas

2005 Pro-Rata

- * Established based on estimated \$8.2 M construction project
- * Section 1 = \$8.76 per gallon per day
- * Section 2 = \$9.24 per gallon per day

Lower Sycolin Sewer Pro-Rata

- * Phase I Pro-Rata (Total cost \$5.3 M)
 - * Pump Station and force main benefits all parcels (Areas A and B)
 - * Engineering, Design and inspection services benefit all parcels (Area A and B)
 - * Airport Gravity main benefits existing Town customers, Loudoun County, Tuscarora Crossing and parcels along Cochran Mill (Area A)
 - * 88% Recoverable
- * Phase II Pro-Rata (Fixed Construction Cost \$4.0 M)
 - * Gravity main benefits Crosstrail and misc property (unassigned) along Cochran Mill (Area B)
 - * 100% Recoverable

Revised Lower Sycolin Sewer Pro-Ratas

2015 Resolution for Lower Sycolin Pro-Rata

- * Phase I Pro-Rata

- * Area A Properties - \$11.92 per gpd

- * Area B Properties - \$5.05 per gpd

- * Phase II Pro-Rata

- * Area B Properties - \$6.91 per gpd

- * Gpd is calculated based on daily flow from DCSM.

- * Pro-Rata rate is adjusted per ENR Construction Index (7563 for Phase I and 9962 for Phase II)

Staff Recommendation

- * Approve sewer construction agreement with Peterson Companies to construct gravity sewer main
- * Approve Sole Source Procurement with Peterson (Not publicly bid Town project)
- * Revised Lower Sycolin Sewer Pro-Ratas for Phase I based on actual engineering design and construction costs and Phase II based on fixed construction cost

Questions and Answers

PRESENTED March 24, 2015

RESOLUTION NO. 2015-

ADOPTED _____

A RESOLUTION: AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN THE TOWN OF LEESBURG AND PETERSON COMPANIES FOR CONSTRUCTION OF PHASE II GRAVITY SANITARY SEWER MAIN OF THE LOWER SYCOLIN CONVEYANCE SEWER SYSTEM; AND AUTHORIZING A SOLE SOURCE PROCUREMENT FOR THE CONSTRUCTION OF PHASE II LOWER SYCOLIN GRAVITY MAIN AND AUTHORIZING THE TOWN MANAGER TO PROCURE THESE SERVICES

WHEREAS, the Town of Leesburg (“the Town”) owns and operates a wastewater treatment plant; and

WHEREAS, the Lower Sycolin Creek Sewage Conveyance System is a Capital Improvement Project (“the Project”) that will result in a gravity sanitary sewer line that runs from the Town’s Lower Sycolin Pump Station across Sycolin Road to the southern property line of Compass Creek near the Leesburg Executive Airport; and

WHEREAS, the Project has been divided into two (2) phases; Phase I has been completed with the construction of a pump station and gravity force main and currently serves properties in a portion of the Lower Sycolin Sewershed (“the Sewer shed”); and

WHEREAS, Phase II will serve the remaining properties in the Sewershed identified with the 2002 Lower Sycolin Creek Sewer Shed Study; and

WHEREAS, the Town has acquired the permanent and temporary easements that are necessary for the construction of the Phase II gravity sanitary sewer line; and

WHEREAS, the Peterson Companies (“Peterson”) currently owns a majority of the land in the Phase II portion of the Sewer shed; and

A RESOLUTION: AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN THE TOWN OF LEESBURG AND PETERSON COMPANIES FOR CONSTRUCTION OF PHASE II GRAVITY SANITARY SEWER MAIN OF THE LOWER SYCOLIN CONVEYANCE SEWER SYSTEM; AND AUTHORIZING A SOLE SOURCE PROCUREMENT FOR THE CONSTRUCTION OF PHASE II LOWER SYCOLIN GRAVITY MAIN AND AUTHORIZING THE TOWN MANAGER TO PROCURE THESE SERVICES

WHEREAS, Peterson has requested from the Town an opportunity to construct the sewer gravity sewer for Phase II in order to have sanitary capacity readily available for their development at Compass Creek (formally Crosstrail); and

WHEREAS, the construction contract of the Phase II portion of the Project is subject to the Virginia Public Procurement Act (“VPPA”); and

WHEREAS, Code of Virginia, § 2.2-4303(E) of the VPPA allows for sole source procurement if there is only one source “practicably available”; and

WHEREAS, the Town and Peterson have negotiated a Construction Agreement whereby Peterson will construct the Phase II portion on the Project while being reimbursed by the Town, along with further terms that are beneficial to the Town; and

WHEREAS, there will be no negative impact on operation of the Town’s water or wastewater treatment plants; and

WHEREAS, the Town will receive Pro-Rata fees to recover the cost of Phase I & II of the project when properties are developed within the Lower Sycolin Sewershed; and

WHEREAS, the Town will receive revenue from out of town sewer users for the majority of the properties developed within the Lower Sycolin Sewershed.

THEREFORE, RESOLVED, by the Council of the Town of Leesburg, Virginia as follows:

SECTION I. The Town Manager is hereby authorized to execute the final Agreement in a

A RESOLUTION: AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN THE TOWN OF LEESBURG AND PETERSON COMPANIES FOR CONSTRUCTION OF PHASE II GRAVITY SANITARY SEWER MAIN OF THE LOWER SYCOLIN CONVEYANCE SEWER SYSTEM; AND AUTHORIZING A SOLE SOURCE PROCUREMENT FOR THE CONSTRUCTION OF PHASE II LOWER SYCOLIN GRAVITY MAIN AND AUTHORIZING THE TOWN MANAGER TO PROCURE THESE SERVICES

form acceptable by the Town Attorney for construction of the gravity sanitary sewer main project for Phase II of Lower Sycolin Creek Sewage Conveyance System with the Peterson.

SECTION II. The Town Council determines that only one source is practicably available for the procurement of the construction of the Phase II Lower Sycolin Creek Sewage Conveyance System and directs that this Resolution be posted on the public notice board in the town offices for a period of ten (10) days.

SECTION III. The Town Manager is hereby authorized to execute and procure the sole source construction of Phase II of Lower Sycolin Creek Sewage Conveyance System from the Peterson.

PASSED this ____ day of March, 2015.

Kristen C. Umstattd, Mayor
Town of Leesburg

ATTEST:

Clerk of Council