



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

**TOWN OF LEESBURG  
TOWN COUNCIL MEETING**

**Subject:** An agreement for the construction of the reclaimed waterline.

**Staff Contact:** Keith Wilson, Land Acquisition Manager, Capital Projects  
Barbara Notar, Town Attorney

**Council Action Requested:** A resolution authorizing the Mayor to execute an agreement that Loudoun County requires for the construction of the reclaimed waterline.

**Staff Recommendation:** The Town Council should approve a resolution authorizing the Mayor to execute an agreement between the Board of Supervisors of Loudoun County, Virginia and the Town of Leesburg to allow the reclaimed waterline to cross a County storm drainage easement located on the property of Sycolin Creek, LLC, in an area south of Cochran Mill Road in Loudoun County.

**Commission Recommendation:** Not Applicable.

**Fiscal Impacts:** There are no processing and/or impact fees associated with this agreement.

**Work Plan Impacts:** None.

**Executive Summary:** This agreement is required by the County of Loudoun to allow the reclaimed waterline to cross their existing storm drainage easement. The reclaimed waterline will be constructed by Panda Stonewall, LLC, and owned and operated by the Town of Leesburg once construction is complete.

**Background:** The reclaimed waterline serving the Panda Stonewall electric generation facilities will need to cross an existing County of Loudoun storm drainage easement. Sycolin Creek, LLC, has conveyed a reclaimed waterline easement to the Town of Leesburg and a temporary construction easement to Panda Stonewall, LLC for construction and operation of the reclaimed waterline crossing their property. The County of Loudoun requires an agreement to be executed by the Town of Leesburg before allowing construction of the reclaimed waterline through and across its easement.

Attachment: Draft Agreement  
Proposed Resolution

**AGREEMENT**

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2015, by and between the **BOARD OF SUPERVISORS OF LOUDOUN COUNTY, VIRGINIA**, a body corporate and politic (hereinafter referred to as “**Board**”); and the **TOWN OF LEESBURG, VIRGINIA**, a municipal corporation (hereinafter referred to as “**Town**”). The Board and the Town are at times collectively referred to hereinafter as the “**Parties**”.

WITNESSETH:

**WHEREAS**, the County was previously granted an easement for storm drainage and stormwater management purposes (the “**County Easement**”) by deed and plat recorded among the land records of Loudoun County, Virginia (the “**Land Records**”), as Instrument Numbers 20050318-0027727 and 20050318-0027728, respectively, which County Easement is located in the Catoctin Election District, Loudoun County, Virginia, upon a parcel (the “**Property**”) shown as Lot 3A on that certain plat recorded among the Land Records as Instrument Number 20141002-0055921, which Property is more particularly identified as PIN: 151-47-6655.

**WHEREAS**, the County Easement is currently improved with an existing wet pond stormwater management facility (the “**Pond**”) constructed pursuant to Site Plan (“**STPL**”) application 2003-0066 and STPL-2004-0063.

**WHEREAS**, pursuant to a certain Agreement for the Delivery and Use of Reclaimed Water between the Town and Panda Stonewall, LLC., (“**Panda**”), dated October 23, 2013 (“**Reclaimed Water Agreement**”), the Town is obligated to acquire necessary easements to allow for the installation and construction of a reclaimed waterline (“**Reclaimed Waterline**”) to be used by the Town to supply reclaimed water to Panda.

**WHEREAS**, subsequent to the creation and grant of the County Easement, the Town was granted an easement for reclaimed waterline purposes (the “**Town Easement**”), and the Town and Panda were granted a temporary construction easement by deed recorded among the Land Records as Instrument Number 20141002-0055919, as corrected by deed and plat recorded among the Land Records as Instrument Numbers 20141103-0062050 and 20141103-0062051, respectively, which Town Easement is located in the Catoclin Election District, Loudoun County, Virginia, upon the Property and through a portion of the County Easement and Pond.

**WHEREAS**, pursuant to Town of Leesburg Plan (“**TLPF**”)-2015-0002 and Grading Permit number X20151660001, and consistent with the easements obtained by the Town under the Reclaimed Water Agreement, the Reclaimed Waterline within the Town Easement will be installed, which installation and construction will necessitate land disturbing activities within the County Easement and Pond. TLPF-2015-0002 and Grading Permit number X20151660001 provide for Panda to perform certain restoration work following the installation and construction of the Reclaimed Waterline within the Town Easement, as indicated in Exhibit A (the “Restoration Work Requirements”).

**WHEREAS**, pursuant to the terms and conditions of the County Easement, the owner of the Property is not permitted to alter, disturb, nor make any changes to the elevation or contours of land within the County Easement.

**WHEREAS**, the Parties now enter into this Agreement to evidence the County’s written approval of the installation and construction of the Reclaimed Waterline within the County Easement and Pond, subject to certain conditions, and to evidence the Town’s ongoing rights with respect to the maintenance of the Reclaimed Waterline within the County Easement and Pond.

**NOW, THEREFORE**, in consideration of the foregoing premises, and the following terms and conditions, the Parties agree as follows:

1. The County hereby gives permission to the Town to install and construct the Reclaimed Waterline, and conduct any necessary associated land disturbing activities, within the County Easement and Pond. In accordance with the terms of the Reclaimed Water Agreement, the installation and construction of the Reclaimed Waterline and any necessary associated land disturbing activities shall be completed. Elevations and contours of, and revegetate and shall be restored within the Pond and County Easement in accordance with the Restoration Work Requirements (“Restoration Work”). During the period of construction, and until such time as the Town has completed said Restoration Work, the Town shall be responsible for all erosion and sediment control and stormwater management functions of the Pond. If the Town fails to complete said Restoration Work, the County may undertake such work as the County deems necessary to complete said Restoration Work and submit an invoice to the Town for such Restoration Work completed by the County. Said invoice shall be due and payable by the Town within ninety (90) days of the Town’s receipt of said invoice.

2. Within ninety (90) days of the County’s issuance of a written determination that Town has completed said Restoration Work or the County’s completion of said Restoration Work, the Town shall install and maintain signage along the edge of the Pond at the locations where the Reclaimed Waterline passes under the Pond, which signage shall indicate the presence of the Reclaimed Waterline under the Pond. If the Town fails to install and/or maintain said signage, the County may undertake such work as the County deems necessary to install and/or maintain said

signage and submit an invoice to the Town for such installation and/or maintenance completed by the County. Said invoice shall be due and payable by the Town within ninety (90) days of the Town's receipt of said invoice.

3. This Agreement shall be recorded among the Land Records and shall constitute a covenant running with the land, and shall be binding on the parties, their successors and assigns.

4. No determination by any court or other governmental authority that any provision of this Agreement is invalid or unenforceable in any instance shall affect the validity or enforceability of (i) any other provision of this Agreement, or (ii) such provision of this Agreement in any circumstance not controlled by such determination. Each provision of this Agreement shall be valid and enforceable to the fullest extent allowed by, and shall be construed whenever possible as being consistent with, all applicable laws.

5. For maintenance purposes, the Town shall have the right to undertake further land disturbing activities, provided the Town shall undertake Restoration Work as described in Paragraph 1.

6. To the extent of any conflict between the County Easement and this Agreement or between the Town Easement and this Agreement, this Agreement shall control as between the Parties.

IN WITNESS WHEREOF, the County and Town have caused this Agreement to be executed, under seal.

[SIGNATURE PAGES FOLLOW]

THIS INSTRUMENT IS HEREBY  
APPROVED ON BEHALF OF THE  
TOWN OF LEESBURG, VIRGINIA

THE TOWN OF LEESBURG

By: \_\_\_\_\_  
Kristen C. Umstatt  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Barbara Notar  
Town Attorney

COMMONWEALTH OF VIRGINIA  
COUNTY OF LOUDOUN, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015,  
by Kristen C. Umstatt, Mayor, of the Town of Leesburg, Virginia.

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

My Commission Expires: \_\_\_\_\_

Notary Registration No.: \_\_\_\_\_

BOARD OF SUPERVISORS OF LOUDOUN  
COUNTY, VIRGINIA

APPROVED AS TO LEGAL FORM

By: \_\_\_\_\_ (SEAL)

\_\_\_\_\_  
Assistant County Attorney

Name: \_\_\_\_\_

Title: Director, Department of General Services

COMMONWEALTH OF VIRGINIA  
COUNTY OF LOUDOUN, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that \_\_\_\_\_ as Director of the Loudoun County Department of General Services, on behalf of the BOARD OF SUPERVISORS OF LOUDOUN COUNTY, VIRGINIA, whose name is signed to the foregoing Agreement, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

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

My commission expires:

\_\_\_\_\_

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

Registration Number:

\_\_\_\_\_

PRESENTED October 13, 2015

RESOLUTION NO. 2015-

ADOPTED \_\_\_\_\_

A RESOLUTION: AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE TOWN OF LEESBURG AND BOARD OF SUPERVISORS OF LOUDOUN COUNTY TO ALLOW A RECLAIMED WATER LINE TO CROSS A LOUDOUN COUNTY EASEMENT.

WHEREAS, the Panda Stonewall LLC (“Panda”) project will need to cross a Loudoun County, Virginia (“County”) storm drainage easement; and

WHEREAS, the Panda project is for the construction of a reclaimed waterline to serve the Panda Clean Energy Power Plant; and

WHEREAS, once constructed by Panda, the reclaimed water line will be owned, operated and maintained by the Town of Leesburg (“Town”); and

WHEREAS, a portion of the designated route for the reclaimed waterline line will cross the property of Sycolin Creek, LLC, and

WHEREAS, the County has an existing storm drainage easement over and across a portion of the property of Sycolin Creek, LLC; and

WHEREAS, Sycolin Creek, LLC, has conveyed by Deed of Easements and Subordination a reclaimed waterline easement to the Town and a temporary construction easement to Panda for the construction and operation of the reclaimed waterline on their property; and

WHEREAS, the County requires an agreement to allow the reclaimed waterline to cross its easement, and

WHEREAS, construction of the reclaimed water line will benefit the residents of Leesburg.

THEREFORE, RESOLVED, by the Council of the Town of Leesburg in Virginia that the Mayor is authorized to execute the agreement with the County for the reclaimed waterline in a form

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approved by the Town Attorney.

PASSED the \_\_\_\_ day of October, 2015.

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Kristen C. Umstattd, Mayor  
Town of Leesburg

ATTEST:

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Clerk of Council