



Date of Council Meeting: October 13, 2015

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: An assignment 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 assigning the Town's temporary construction easement rights to Panda Stonewall, LLC, for the construction of the reclaimed waterline.

Staff Recommendation: The Town Council should approve a resolution authorizing the Mayor to execute an assignment agreement between the Town of Leesburg and Panda Stonewall, LLC for assignment of the Town's temporary construction easements for construction of the reclaimed waterline in an area along the north side of Sycolin Creek in Loudoun County.

Commission Recommendation: Not Applicable.

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

Work Plan Impacts: Not applicable.

Executive Summary: Panda Stonewall, LLC (Panda) has requested that the Town assign its temporary construction easement rights to Panda for construction of the reclaimed waterline. The reclaimed waterline will be constructed by Panda, but owned and operated by the Town once construction is complete.

Background: The reclaimed waterline serving the Panda Stonewall, LLC (Panda) electric generation facilities will be located adjacent to a portion of the Town's Lower Sycolin Creek Sewage Conveyance System sanitary sewer line. The Town acquired certain permanent sanitary sewer and temporary construction easements for the construction, operation and maintenance of sanitary sewer and reclaimed water lines over and across the property of Luck Stone Corporation and Woodpecker, LLC. Panda will be constructing the reclaimed waterline in this area and has requested the Town's assignment of its temporary construction easements rights for construction of the reclaimed waterline.

Attachment: Draft Assignment Agreement
Proposed Resolution

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT (this “**Assignment**”) is made as of this ___ day of _____, 2015, by and among the TOWN OF LEESBURG, a Virginia municipal corporation (“**Assignor**”), and PANDA STONEWALL LLC, a Virginia limited liability company, f/k/a GREEN ENERGY PARTNERS/STONEWALL LLC (“**Assignee**”).

WHEREAS, Assignor and Assignee are parties to that certain Agreement for the Delivery and Use of Reclaimed Water dated October 23, 2013 (as the same may be amended from time to time, the “**Delivery Agreement**”), which provided that, among other things, Assignor shall exercise its best reasonable efforts to acquire necessary easements for Assignee’s construction of a pipeline as described under the Delivery Agreement;

WHEREAS, Assignor is the grantee under the following deeds of easement: (i) Deed of Easement (Document Number 20140521-0026796) between Assignor and Luck Stone Corporation, a Virginia corporation, dated April 23, 2014, (ii) Deed of Easement (Document Number 20150506-0028920) between Assignor and Luck Stone Corporation, a Virginia corporation, dated May 1, 2015, (iii) Deed of Easement Agreement (Document Number 20140319-0013171) between Assignor and Woodpecker, LLC, a Virginia limited liability company, dated March 6, 2014, and (iv) any other easement rights obtained by Assignor for purposes of the reclaimed water line as described in that certain Agreement for the Delivery and Use of Reclaimed Water between Assignor and Assignee dated October 23, 2013 (as all the same may be amended from time to time, collectively the “**Deeds of Easement**”), which granted and conveyed, among other things, unto Assignor and its successors and assigns a temporary construction easement (the “**Temporary Construction Easement**”) for the purposes described in the Deeds of Easement;

WHEREAS, pursuant to the terms of the Delivery Agreement, Assignee is obligated to construct certain facilities for Assignor, including facilities contemplated by the Deeds of Easement, and Assignor is obligated to obtain and provide to Assignee the easement rights necessary for Assignee to satisfy its construction obligation to Assignor; and

WHEREAS, in accordance with the terms of the Delivery Agreement, Assignor desires to assign to Assignee, a non-exclusive right to use the Temporary Construction Easement for the purposes described in the Deeds of Easement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1. **Terms.** Capitalized terms not defined herein shall have the meanings set forth in the Delivery Agreement or the Deeds of Easement, respectively.
2. **Assignment.** Assignor does hereby transfer, assign, convey and set over to Assignee, a non-exclusive right to use the Temporary Construction Easement for the purposes described in the Deeds of Easement. Notwithstanding the foregoing, nothing herein shall limit

Assignor's rights under the Deeds of Easement, which rights Assignor shall retain for the purposes described in the Deeds of Easement.

3. **As-Is Condition.** Assignor and Assignee agree that the right to use the Temporary Construction Easement is being conveyed by Assignor and accepted by Assignee "as-is", subject to any representations or warranties of Assignor set forth in the Delivery Agreement.

4. **Further Assurances.** Each party will execute or procure any additional documents necessary to establish the rights and obligations of Assignee hereunder and under the Delivery Agreement and Assignor shall, at its sole cost, take such commercially reasonable actions as Assignee shall reasonably request to obtain any consent required to assign the Temporary Construction Easement to Assignee.

5. **Binding Effect.** This Assignment shall be binding upon and inure to the benefit of Assignor, Assignee, and their respective successors and assigns.

6. **Counterparts.** This Assignment may be executed in multiple counterparts, each of which shall constitute an original, and which together shall constitute one Assignment.

Signature Pages to Follow.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the date set forth above.

ASSIGNOR:

TOWN OF LEESBURG,
a Virginia municipal corporation

By: _____

Name: _____

Title: _____

Assignee's Signature Page to Follow.

ASSIGNEE:

PANDA STONEWALL LLC, f/k/a GREEN
ENERGY PARTNERS/STONEWALL LLC,
a Virginia limited liability company

By: _____
Name: _____
Title: _____

End of Signature Pages.

PRESENTED October 13, 2015

RESOLUTION NO. 2015-

ADOPTED _____

A RESOLUTION: AUTHORIZING THE MAYOR TO EXECUTE AN ASSIGNMENT AGREEMENT BETWEEN THE TOWN OF LEESBURG AND PANDA STONEWALL, LLC, FOR ASSIGNMENT OF TEMPORARY CONSTRUCTION EASEMENTS FOR CONSTRUCTION OF RECLAIMED WATER LINE.

WHEREAS, the Panda Stonewall (“Panda”) reclaimed waterline project will be located adjacent to a portion of the Lower Sycolin Creek Sewage Conveyance System and within the area of permanent and temporary easements acquired for the construction of the sanitary sewer line; 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 will cross the property of Luck Stone Corporation and Woodpecker, LLC, and

WHEREAS, the Town acquired certain permanent and temporary easements over and across a portion of the property of Luck Stone Corporation and Woodpecker, LLC; and

WHEREAS, Luck Stone Corporation and Woodpecker, LLC, have conveyed by Deed of Easement a permanent sanitary sewer and temporary construction easement to the Town for the construction and operation of sanitary sewer and reclaimed water lines on their property; and

WHEREAS, Panda has requested that the Town assign its temporary construction easements to Panda for the construction of the reclaimed waterline; and

WHEREAS, construction of the reclaimed waterline will benefit the residents of Leesburg.

A RESOLUTION: AUTHORIZING THE MAYOR TO EXECUTE AN ASSIGNMENT AGREEMENT BETWEEN THE TOWN OF LEESBURG AND PANDA STONEWALL, LLC, FOR ASSIGNMENT OF TEMPORARY CONSTRUCTION EASEMENTS FOR CONSTRUCTION OF RECLAIMED WATER LINE.

THEREFORE, RESOLVED, by the Council of the Town of Leesburg in Virginia that the Mayor is authorized to execute the assignment agreement and other necessary agreements with Panda Stonewall, LLC, for the reclaimed water line in a form approved by the Town Attorney.

PASSED the ____ day of October, 2015.

Kristen C. Umstattd, Mayor
Town of Leesburg

ATTEST:

Clerk of Council