

ORDINANCE NO.: 2010-081

Authorizing the City Manager to execute a Temporary Use Agreement between the City of Columbia and Palmetto Waste Processing, LLC

ORIGINAL
STAMPED IN RED

BE IT RESOLVED by the Mayor and City Council this 5th day of May, 2010, that the City Manager is authorized to execute the attached Temporary Use Agreement between the City of Columbia and Palmetto Waste Processing, LLC, for Palmetto Waste Processing LLC to accept collected grease waste from pumping trucks, pretreatment of the waste and disposal of dried sludge offsite per SCDHEC regulations at the City of Columbia's Waste Water Treatment Plant, and for the integration of the treated water into the City of Columbia Metro Wastewater Treatment Plant at a treated water discharge point to be specified by the City for a period of one (1) year, for a fee of One and No/100 (\$1.00) Dollar.

Requested by:



MAYOR

Approved by:



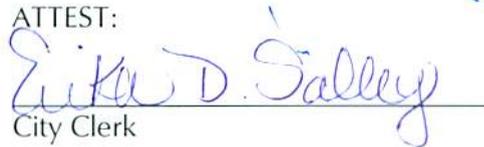
City Manager

Approved as to form:



City Attorney

ATTEST:



City Clerk

Introduced: 4/28/2010

Final Reading: 5/5/2010



CITY OF COLUMBIA
SOUTH CAROLINA

INTEROFFICE MEMORANDUM

TO: Mr. Steven A. Gantt, City Manager

FROM: John J. Dooley, Jr., P.E., Director of Utilities & Engineering

SUBJECT: **CITY COUNCIL AGENDA ITEM:** Temporary Use Agreement Between
the City and Palmetto Waste Processing, LLC for Grease Waste Removal
Facility at the Metro Wastewater Treatment Plant.

Date: April 23, 2010

Initial:

On March 19, 2010 grease loads were temporarily suspended at the Metro Septage Receiving Station due to water quality issues at the Metro Wastewater Treatment Plant. A RFQ (attached) was advertised on March 31, 2010 for all interested companies experienced in providing services necessary for the collection and disposal of grease waste for up to a 12 month period. Proposals were received from Stanley Environmental Solutions, Greenway Disposals and Palmetto Waste Processing, LLC. The review panel has recommended Palmetto Waste Processing, LLC be approved as the temporary grease waste removal facility to be located at the Metro Wastewater Treatment Plant. I recommend entering into a Temporary Use Agreement with Palmetto Waste Processing to provide this service beginning in May 2010 for up to one year.

Palmetto Waste Processing, LLC has agreed to provide and fund this service and further pay the City \$1,000.00 a month for the disposal of their treated wastewater. The work will likely impact all four City Council Districts.

The Agreement has been reviewed by the Legal Department and I recommend approval.

Enclosure

TEMPORARY USE AGREEMENT

This Agreement ("Agreement") is made and entered into between the City of Columbia ("CITY") acting by and through its City Manager ("Manager"), and Palmetto Waste Processing, LLC at Lexington, SC, ("Licensee") on this the _____ day of,

_____.

IN CONSIDERATION OF the duties, obligations and covenants of each party to the other, and other good and valuable consideration, CITY and Licensee agree as follows:

1. PREMISES: Subject to the terms of this Agreement, CITY grants to Licensee a temporary license to use the Premises as described in Exhibit A (the "Premises").

Licensee has inspected the Premises and accepts the same AS IS, WITH ALL FAULTS, IN ITS THEN EXISTING CONDITION AND STATE. THE CITY EXPRESSLY DISCLAIMS ANY WARRANTY, EXPRESSED OR IMPLIED, CONCERNING THE CONDITION OF THE PREMISES, OR ITS FITNESS FOR USE FOR LICENSEE'S PURPOSES.

2. TERM: The License granted hereby shall commence on _____ and end at _____, on _____, (the "Term"), subject to termination by the City at any time upon five (5) days prior written notice.

3. USE: Licensee will use the Premises for the following purposes and for no other purpose or use without the prior written consent of the Manager: accept collected grease waste from pumping trucks, pretreatment of the waste, disposal of dried sludge offsite per SCDHEC regulations, and the integration of the treated water into the City of Columbia Metro Wastewater Treatment Plant at a treated water discharge point to be specified by the City.

4. FEES: Licensee will pay to the CITY a fee of One and no/100 Dollars (\$1.00) for use and occupancy of the Premises during the Term of this Agreement. The fee for the Term shall be paid in advance upon execution of this Agreement. All payments shall be by check, made payable to City of Columbia and mailed or otherwise delivered to:

Attn: Accounts Receivable
City of Columbia
P.O. Box 147
Columbia, SC 29217

5. RESPONSIBILITIES - LICENSEE

A. Improvements - Licensee shall obtain Manager's prior written approval before any modifications, alterations, or other changes ("Changes") to the Premises are undertaken, even if temporary in nature, and to coordinate such Changes with the Manager or his

designee. Such approval may be granted, denied, or conditioned, in the Manager's reasonable discretion. Any approved Changes to the Premises will be at Licensee's expense. Upon termination of this License, Licensee shall, at its sole expense, dismantle and remove any Changes to facilitate and restore the Premises to its original condition, normal wear and tear excepted.

B. Clean Premises - Licensee, at Licensee's expense, shall provide the necessary services to maintain the Premises in a clean, neat and sanitary condition. Licensee shall keep the Premises clean and free of litter and debris at all times.

C. Right of Access – The City shall have the right of access to the Premises at all reasonable times. Licensee will provide any keys or cards to facilitate access to the Premises. The City will not interrupt Licensee's activities.

D. Compliance with Law – In its use of the Premises, Licensee shall comply with all applicable state, federal, and City laws, ordinances, rules, and regulations regarding its work, and OSHA regulations. Licensee shall indemnify and hold the City harmless from and against, and shall timely pay, all fines or penalties imposed for violations of such laws, ordinances, rules and regulations by Licensee, or its agents, employees, or contractors. Licensee, at Licensee's cost, shall obtain all necessary or appropriate approvals, licenses and/or permits as may be required of Licensee in performing the use permitted under this Agreement.

E. Hazardous Materials - No hazardous materials or toxic substances shall be kept, stored, used or discharged on Premises without prior notification to and consent by the Manager, the Columbia Police and Columbia Fire Department. Licensee shall comply strictly with all applicable Federal, State, and local laws, ordinances, rules and regulations regarding hazardous materials or toxic substances, and, unless caused by the sole negligence or willful misconduct of the City, Manager or their respective agents or employees, Licensee shall indemnify and hold the City harmless from and against any and all liability arising from Licensee's use, storage or discharge of hazardous materials or toxic substances on the Premises.

F. Security - Licensee shall be solely responsible for the security of its personnel, property and equipment. City personnel shall have the authority to prohibit any activity when necessary to protect City property and equipment or the public health and safety; however this shall not decrease the liability of Licensee in any way.

G. Contact Names - Licensee shall provide a list of contact persons responsible for the Premises, which shall to be given to the representative of the Manager. The list shall include numbers that can be called during any 24-hour period and on weekends. The Manager shall also provide Licensee a list of names and phone numbers for Licensee to call in case of an emergency.

H. Fire Extinguishing Equipment - Licensee shall provide fire-extinguishing equipment at its own expense, as reasonably directed by the CITY, if such equipment is required by law or regulation.

I. Entry and Exit Routes/Parking - Licensee shall use only the designated route to and from the Premises, to be specified by the City. The designated route is to be kept free from obstructions, including vehicles, equipment and personnel. Care must be taken not to interfere with other operations or business being conducted around the Premises or on other portions of the Premises.

J. Alcohol, Drugs, Firearms - Licensee shall not permit the use or possession of firearms, alcoholic beverages, illegal drugs, or controlled substances on the Premises.

K. Utilities – No heating, air conditioning, electrical, other utilities or restroom facilities are available on site, except as provided below. Licensee shall provide all other utilities at Licensee's expense.

L. Sewer – Licensee shall pay a monthly sewer charge of One Thousand and no/100 Dollars (\$1,000.00) for the disposal of the treated water into a treated water discharge point. This charge shall be due and payable on the first of each month for the Term of this Agreement. All sewer payments shall be by check, made payable to City of Columbia and mailed or otherwise delivered to:

Attn: Accounts Receivable
City of Columbia
P.O. Box 147
Columbia, SC 29217

M. Payments from grease haulers/pumping trucks – All billing and collection of funds from grease haulers/pumping trucks shall be the responsibility of the Licensee.

6. RESPONSIBILITIES – CITY

A. CITY shall provide Licensee reasonable access to the Premises for the purposes intended under this Agreement.

B. The City shall not be obligated to make any improvements or repairs whatsoever to the Premises while in use under this Agreement. Unless otherwise agreed in writing, in the event that the Premises become unsuitable for the uses intended under this Agreement, the City shall not be obligated to either repair or remedy any defects causing such event nor shall City be obligated to provide replacement facilities: provided, however, if such event causes the Premises to become unsuitable for the uses intended under this Agreement Licensee may terminate this Agreement upon five (5) days written notice to City.

C. Water – The CITY shall provide water service to the Premises.

7. TERMINATION:

A. Termination by Licensee - This Agreement may be terminated by Licensee upon material default by CITY in the performance of any covenant or agreement herein required to be performed by CITY and the failure of CITY to remedy such default within five (5) days after receipt of a written notice to remedy the same from Licensee.

B. Termination by CITY - This Agreement may be terminated by CITY upon the occurrence of one or more of the following grounds:

1. Licensee fails to pay to CITY any fee or charge required hereunder, and such failure continues for ten (10) days after receipt of written notice and demand;

2. Licensee materially defaults on the performance of any other material obligation of Licensee hereunder, and such default has not been cured within five (5) days after receipt of written notice of default;

3. Licensee shall become insolvent, shall make a general assignment for the benefit of creditors, shall file a voluntary petition in bankruptcy or indebtedness under the federal bankruptcy laws, or shall consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property;

4. The City shall, at its sole option and discretion, have the right to terminate this Agreement for any reason whatsoever. A termination for default under this Agreement, if wrongfully made, shall be treated as a termination for convenience under this clause;

5. Upon expiration of the term of this Agreement; and

6. By mutual agreement.

8. RE-DELIVERY OF PREMISES: Licensee shall, upon termination of this License, quit and deliver the Premises to CITY peaceably, quietly and in a condition as good or better as the same now exist, reasonable use and wear thereof excepted. Licensee, at Licensee's expense, shall repair any damage to the Premises caused by or as the result of Licensee's use of the Premises.

9. PERSONAL PROPERTY: Upon termination of this Agreement, Licensee shall remove all of its personal property from Premises. If Licensee fails to promptly remove its personal property from the Premises, the CITY shall have the right (but not the obligation) to store such property, either on the Premises or remove the property and store it off-premises, and charge Licensee the greater of THREE HUNDRED DOLLARS (\$300.00) per day or CITY's actual expense, plus a 15% administrative charge. Licensee shall assume all risk of damage to or loss of its property arising out of storage of Licensee's property by the City.

10. **FORCE MAJEURE:** Neither CITY nor Licensee shall be deemed to be in default of this Agreement by reason of its failure to perform any of its obligations hereunder if, while, and to the extent that such failure is due to strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible, and which are not within its control.

11. **INSURANCE REQUIREMENTS:** Licensee shall provide insurance in compliance with Section 11-71 of the Code of Ordinances of the City of Columbia for the duration of this Agreement, and shall furnish evidence of such insurance to the CITY prior to entry onto the Premises.

12. **LIABILITY AND INDEMNIFICATION:** Licensee shall defend, indemnify and hold harmless CITY and its officials, employees, agents, representatives, successors and assigns (the "Indemnified Parties"), from and against all costs, expenses (including reasonable outside attorneys' fees, expenses, and court costs), liabilities, damages, claims, suits, actions and causes of actions whatsoever ("Claims"), to the extent arising directly or indirectly, out of (a) any material breach of this Agreement by Licensee, its agents, employees, subtenants or contractors, (b) any false representation or warranty made by Licensee hereunder, (c) any negligent act or omission, gross negligence, or willful misconduct of Licensee, or its agents, employees, subtenants or contractors in connection with this Agreement, (d) any claim arising from an alleged defect in the Premises, the actual use of the Premises, or for any damage to or destruction of the Premises brought by or caused by Licensee, its agents, employees, invitees, guests, or any and all persons on or about the Premises with the permission, express or implied, of the Licensee. LICENSEE'S OBLIGATIONS UNDER THIS PARAGRAPH EXPRESSLY INCLUDE CLAIMS ARISING OUT OF, OR CONCERNING THIS AGREEMENT, OR LICENSEE'S USE OR OCCUPANCY OF THE PREMISES, THAT ARE CAUSED BY THE CONCURRENT NEGLIGENCE OR WILLFUL MISCONDUCT OF LICENSEE, OR ITS AGENTS, EMPLOYEES, SUBTENANTS AND CONTRACTORS. Licensee shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense of all Claims against any of the Indemnified Parties, except for such Claims arising out of the sole negligence or willful misconduct of the Indemnified Parties. Maintenance of the insurance required under this Agreement shall not affect Licensee's indemnity obligations. Licensee may contest the validity of any Claims, in the name of CITY or Licensee, as Licensee may in good faith deem appropriate, provided that the expenses thereof shall be paid by Licensee and Licensee shall maintain adequate insurance to cover any loss(es) which might be incurred if such contest is ultimately unsuccessful.

13. **LIMITATION OF LIABILITY:** LICENSEE HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER ANY CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES FROM THE CITY, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR INCOME, CLAIMS OF LICENSEE'S CUSTOMERS AND CONTRACTORS, AND OTHER SIMILAR CLAIMS OR DAMAGES.

14. **ASSIGNMENT:** Licensee will not sublet, or assign any rights under this Agreement or any portion of the Premises without the prior written consent of the Manager, which consent may not be unreasonably withheld.
15. **NOTICES:** All notices under this Agreement shall be by certified mail, overnight mail, or by personal delivery, and shall be effective upon receipt. Notice shall be sent to the address for the receiving party set forth in the initial paragraph of this Agreement, or to such other address as a party may designate for notice purposes in writing.
16. **JURISDICTION AND VENUE:** This Agreement is made under the laws of the State of South Carolina, and any disputes that arise under or concern this Agreement shall be governed by the laws of the State of South Carolina. For any suit at law or in equity involving the Agreement, venue shall be proper and lie exclusively in Richland County, South Carolina.
17. **NON-DISCRIMINATION, AFFIRMATIVE ACTION, AMERICANS WITH DISABILITIES ACT:** Licensee, for itself, its successors and assigns, as part of the consideration heretofore, agrees that no person, on the grounds of race, color national origin, age, sex, or handicap, shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination, in the use of the Premises and the furnishing of services thereof. Licensee will comply fully with all provisions of applicable law.
18. **RELIANCE:** CITY is granting this license in reliance on the information provided by Licensee. Licensee warrants that the information provided by Licensee is true, correct, and complete. Breach of the foregoing warranty shall be a material default by Licensee, which shall entitle CITY to immediately terminate this License per provisions of this Agreement.
19. **NO LIENS:** Licensee shall keep the Premises and Licensee's interest therein free and clear of any mechanics' or materialmen's lien or encumbrance of any kind whatsoever created by Licensee's act or omission.
20. **NON-WAIVER OF RIGHTS:** Continued performance by either party hereto of the terms of this Agreement following a default shall not be deemed a waiver of any right to cancel this Agreement for any subsequent default and no waiver of such default shall be construed or act as a waiver of any subsequent default.
21. **INVALIDITY OF CLAUSES:** In the event that any covenant, condition, or clause, herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or clause, shall in no way affect any other covenants, conditions or clauses.
22. **ATTORNEY'S FEES:** In any action brought by CITY for the enforcement of the obligations of Licensee, CITY shall be entitled to recover interest at the maximum lawful rate, reasonable attorney's fees and court costs and other expenses of litigation.

23. HEADINGS: The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

25. LEGAL RELATIONSHIPS: It is understood and hereby agreed by the Parties that Licensee is, and shall be, an independent contractor hereunder and shall control all ways, means, and details incident to the performance of its work, for itself, and its agents and employees.

26. ENTIRE AGREEMENT: It is understood and agreed that this instrument (including the Exhibits described below) contains the entire agreement between the parties hereto with respect to the subject matter of this Agreement, and may not amended or modified except in writing signed by both parties.

27. CITY COUNCIL APPROVAL: This Agreement is subject to approval by City Council.

IN WITNESS WHEREOF, this Agreement is hereby executed as of the date set forth above.

CITY OF COLUMBIA, SOUTH CAROLINA

Carig Anna By: [Signature]
Witness City Manager

Palmetto Waste Processing, LLC
[Signature] By: [Signature]
Witness Title: President

RECOMMENDED BY: [Signature]
Director of Utilities and Engineering