

RESOLUTION NO.: R-2016-037

Authorizing the City Manager to execute and ratifying the execution of an Agreement for Wastewater Treatment and Disposal by and between the City of Columbia and Palmetto of Richland, LLC

BE IT RESOLVED by the Mayor and City Council of the City of Columbia, South Carolina this ___ day of _____, 2016, that the City Manager is hereby authorized to execute and does hereby ratify the execution of the attached Agreement for Wastewater Treatment and Disposal by and between the City of Columbia and Palmetto of Richland, LLC, or on a form approved by the City Attorney, for the uses and purposes therein mentioned.

Requested by:

Assistant City Manager Gentry

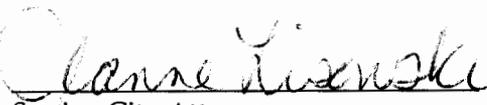
Mayor

Approved by:

City Manager

Approved as to form:

ATTEST:


Senior City Attorney

City Clerk

Introduced:

Final Reading:

**FIRST AMENDMENT TO
AGREEMENT FOR WASTEWATER TREATMENT AND DISPOSAL**

THIS FIRST AMENDMENT TO AGREEMENT FOR WASTEWATER TREATMENT AND DISPOSAL (the “*First Amendment*”) is made and entered into by and between **CITY OF COLUMBIA, South Carolina**, a municipal corporation organized and existing under the laws of the State of South Carolina (“*City*”) and **PALMETTO OF RICHLAND COUNTY LLC (“PRC”)**, a limited liability company organized and existing under the laws of the State of Delaware and authorized to do business in the State of South Carolina, collectively the “*Parties*”.

WHEREAS, the Parties executed an Agreement for Wastewater Treatment and Disposal dated March 21, 2013 (the “*Original Agreement*”); and

WHEREAS, capitalized terms used herein but not defined herein, shall have the meaning ascribed to such terms in the Original Agreement; and

WHEREAS, PRC has not completed and will not complete the PRC Pipeline by the end of the Gap Period as anticipated on the execution of the Original Agreement; and

WHEREAS, the Parties wish to amend the Original Agreement to provide for more favorable pricing to PRC than set forth in the Original Agreement for a period after the expiration of the Gap Period upon the terms and subject to the conditions set forth in this First Amendment; and

WHEREAS, PRC is willing to construct the PRC Pipeline along the “Northern Route” (as referenced below), which will (i) cost substantially more than the originally-contemplated route, and (ii) open up new portions of Richland County for water and wastewater services to both PRC and the City;

NOW THEREFORE, in consideration of the above, and the conditions, covenants and obligations between the Parties as outlined further herein, the sufficiency of which is accepted by the Parties hereto, the Parties agree as follows:

1. PRC shall construct the PRC Pipeline substantially along the route indicated on Exhibit A as the “Northern Route”. In the event that PRC informs the City that it will not be able to construct the PRC Pipeline as contemplated herein, then this Amendment shall terminate and be null and void. No less frequently than once each calendar quarter, PRC shall provide to the City the then current status of the construction of the PRC Pipeline. Such status report shall include the status of right of way acquisitions and PRC Pipeline construction. The report shall also include PRC’s good faith estimate of a completion date of the PRC Pipeline.
2. Water Related Matters.
 - (a) Neither PRC nor any of its Affiliates (as defined herein) shall offer water service to (i) any customer which is being directly or indirectly provided water by the City as of the date hereof or (ii) any customer in the blue territory shown on the attached Exhibit B (excluding any

customers served by an entity other than the City or by an entity purchasing water from the City to serve such customers).

(b) “Affiliate” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. “Person” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

(c) For avoidance of doubt, this Section 2 shall not preclude the acquisition of water customers by PRC via the acquisition of a non-Affiliate of PRC that is providing water to customers within the blue territory shown on the attached Exhibit B, **provided** that the water being provided by such non-Affiliate of PRC is not being purchased from the City.

3. Section 3.3 of the Original Agreement shall be amended and restated to read as follows:

3.3 Revised Monthly Fees and Related Matters

(a) Notwithstanding anything herein to the contrary, (i) if on the expiration of the Interim Period, this Agreement has not been terminated pursuant to Article IV, then for the period commencing with the first calendar month following the expiration of the Interim Period and continuing to the end of the sixth calendar month following the expiration of the Interim Period (the “Gap Period”), the Monthly Fee shall be changed to an amount equal to \$17.00 per residential service connection or residential service connection equivalent (the “Gap Fee”), and (ii) if the Agreement has not been terminated pursuant to Article IV upon the expiration of the Gap Period, the Monthly Fee shall be changed to an amount equal to 70% of the City’s then published rate to treat “Out of City” sewer per 100 cubic feet of wastewater treated by the City. (The current published charge is \$5.83 per 100 hundred cubic feet.) The charge per 100 cubic feet shall be established at the end of the Gap Period and shall remain the same through September 30, 2017 (the “Extension Period”). At the end of the Extension Period, the Monthly Fee shall be changed to an amount equal to 100% of the City’s then published rate to treat “Out of City” sewer per 100 cubic feet of wastewater treated by the City, as such published rate shall change from time to time.

(b) Beginning with the rate being charged during the Extension Period, the City agrees to provide PRC at least ninety (90) days’ notice of any change in its published monthly wastewater treatment rate. The published sewer service rates include a charge per size of meter per month (the “Fixed Charge”). For avoidance of doubt, this Fixed Charge shall not be due from PRC to the City.

(c) For the purpose of calculating the charge contemplated by this Section 3.3, the Parties shall locate and install (at PRC's expense) a mutually approved meter to measure the flow of wastewater from the Purchased Area to the Facility.

4. Section 5.3 of the Original Agreement shall be amended to provide the following notice provision for Buyer:

If to Buyer, addressed to:

Palmetto of Richland County LLC
1710 Woodcreek Farms Rd.
Elgin, SC 29045
Attention: Mark Daday
Fax: (803) 699-2423

With a copy to:

Pacolet Milliken Enterprises, Inc.
550 S. Main Street, Suite 601
Greenville, SC 29601
Attn: William P. Crawford, Jr.
Fax: (864) 342-6416

5. Except as provided herein, the Original Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this First Amendment to Agreement for Wastewater Treatment and Disposal as of the latest date written below.

PALMETTO OF RICHLAND COUNTY LLC

CITY OF COLUMBIA,
SOUTH CAROLINA

By: _____
Name: Mark Daday
Title: CFO
June __, 2016

By: _____
Name: Teresa B. Wilson
Title: City Manager
June __, 2016

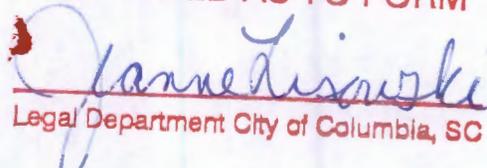
APPROVED AS TO FORM

Legal Department City of Columbia, SC

Exhibit A

Northern Pipeline Route

See attached.

PRC PIPELINE LAYOUTS NORTHERN ROUTE

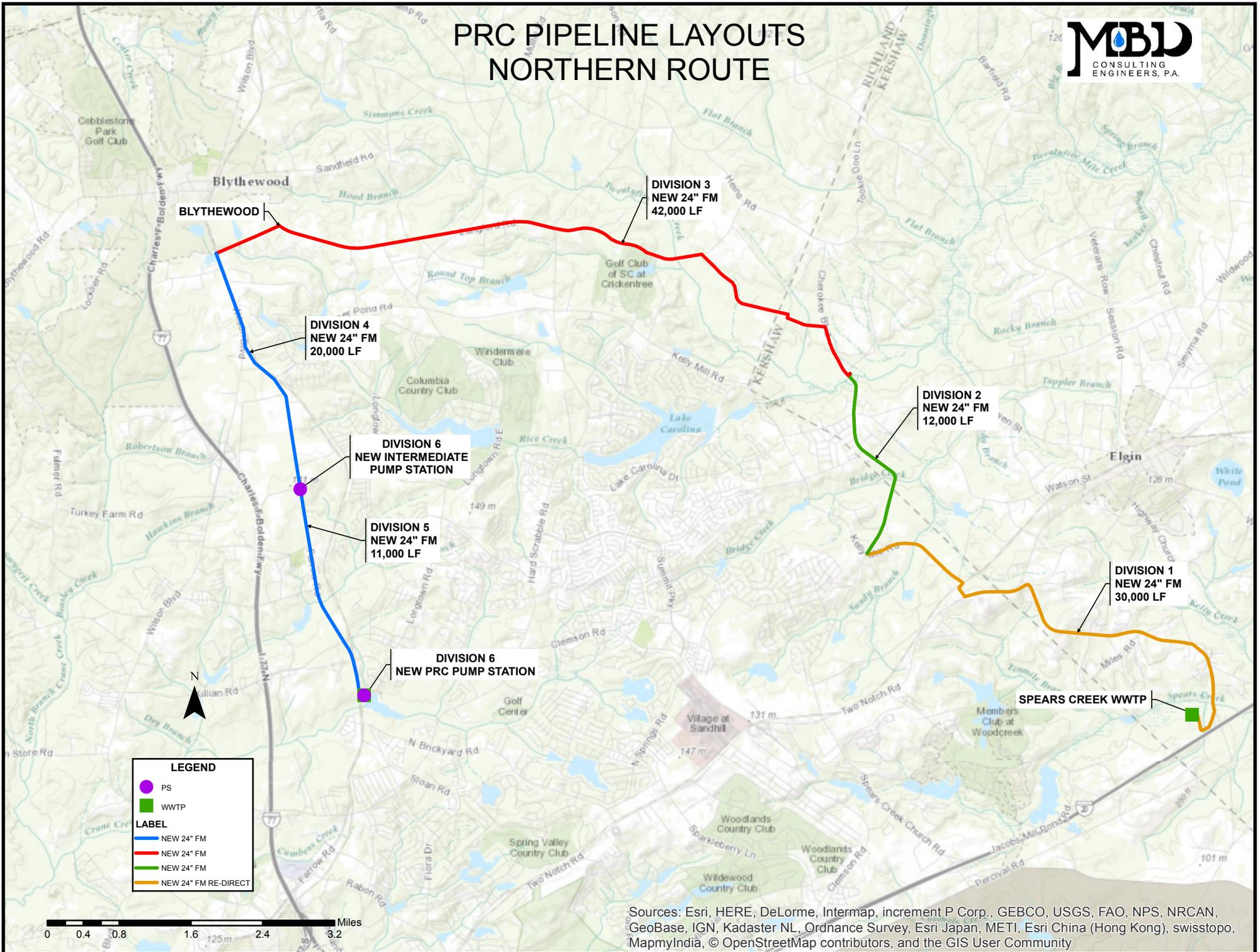


Exhibit B

Water Customer Territory

