



Interoffice Memorandum

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

OCT 06 2015 *JLK/LC*

September 22, 2015

TO: Mayor Teresa Jacobs
and Board of County Commissioners

FROM: Raymond E. Hanson, P. E., Director
Utilities Department

A handwritten signature in black ink, appearing to read "Raymond E. Hanson".

**SUBJECT: BCC AGENDA ITEM – Consent Agenda
October 6, 2015 BCC Meeting
Halpern’s Steak and Seafood Wastewater Flow Monitoring
Agreement
Contact Person: Andres Salcedo, P. E., Assistant Director
Utilities Department
407-254-9719**

The property owner, Pennsylvania Liberty Property Limited Partnership, also known as Liberty Property Limited Partnership, and tenant, Halpern’s Steak and Seafood Company LLC, are constructing a new food processing and distribution facility at 2412 West Sand Lake Road. Wastewater capital charges for the property have been determined based on flow estimates pursuant to subsection 37-5b of the Orange County Code.

The property owner and tenant have submitted a signed and sealed engineering study estimating wastewater flows and have agreed to enter into a five year Flow Monitoring Agreement with the Utilities Department.

The agreement provides for a five-year monitoring period to monitor the wastewater discharges from the facility. A monthly monitoring fee will be assessed during the five-year period, and additional capital charges will be levied if the six month average wastewater flow exceeds the signed and sealed engineering estimate at any time during the five year period.

The Orange County Attorney’s Office staff reviewed the agreement and finds it acceptable. Utilities Department staff recommends approval.

Action Requested: Approval of Halpern’s Steak and Seafood Wastewater Flow Monitoring Agreement by and between Pennsylvania Liberty Property Limited Partnership, a/k/a Liberty Property Limited Partnership, Halpern’s Steak and Seafood Company LLC and Orange County for a five-year monitoring period to monitor wastewater discharges.

District 6.

OCT 06 2015 *SLK/LC*

**HALPERN'S STEAK AND SEAFOOD WASTEWATER
FLOW MONITORING AGREEMENT**

This Halpern's Steak and Seafood Wastewater Flow Monitoring Agreement (the "Agreement") is made and entered into as of the date later executed below by and between Pennsylvania Liberty Property Limited Partnership, a/k/a Liberty Property Limited Partnership, a Florida foreign limited partnership authorized to do business in the State of Florida, with a principal place of business and mailing address of 500 Chesterfield Parkway, Malvern, PA, 19355, (the "OWNER"), and Halpern's Steak and Seafood Company LLC, a Florida foreign limited liability company, authorized to do business in the State of Florida, with a principal place of business at 1300 Gezon Parkway SW, Wyoming, MI 49509 (the "TENANT"), and Orange County, a charter county and political subdivision of the State of Florida whose address is 201 South Rosalind Avenue, Orlando, Florida 32801 (the "COUNTY").

RECITALS

WHEREAS, Orange County Code Section 37-5, provides for wastewater capital charges for new connections to the wastewater system and for increased flows to the wastewater system due to altering the interior or the use of a structure; and

WHEREAS, establishments that have wastewater flows in addition to flows associated with standard Orange County Factors, as described in subsection 37-5(b)(5)b shall submit an estimate of wastewater flows; and actual flows may be subject to monitoring to verify the accuracy of the flow estimate; and

WHEREAS, wastewater capital charges for this property have been determined based on flow estimates pursuant to subsection 37-5(b)(5)b of the Orange County Code; and

WHEREAS, pursuant to Orange County Code Section 37-5(b)(1), capital charges, and the right to service related thereto, shall be valid only for the property specified in the application for service, and the rights related to such capital charges may not be transferred or sold for use on any other property; and

WHEREAS, the OWNER owns property located at 2412 West Sand Lake Road, Orlando, Florida 32809, which is located within Orange County, as such property is more particularly described in Exhibit "A" attached hereto and incorporated by this reference (the "Property"); and

WHEREAS, the Property is located within the COUNTY'S wastewater service territory and, therefore, the COUNTY is the appropriate wastewater service provider with jurisdiction over the Property; and

WHEREAS, the OWNER, or the TENANT, is constructing a new food processing and distribution facility on the Property (the "Facility"); and

WHEREAS, the OWNER, or the TENANT, has submitted to the COUNTY an engineering study, signed and sealed by a professional engineer licensed in the State of Florida, estimating the operational wastewater flows for the Property's new use to be 74.364 Equivalent Residential Units ("ERUs"), which is equivalent to 16,732 gallons per day ("gpd") (the "Current Capacity Flow"); and

WHEREAS, the OWNER, or the TENANT, has submitted to the COUNTY and to the Orlando Utilities Commission ("OUC") construction plans for approval ("Construction Plans"), paid capital charges for the Current Capacity Flow, and obtained an Orange County Building Permit ("Building Permit"); and

WHEREAS, the OWNER and TENANT have entered into a lease agreement for use of the Facility wherein the TENANT will use the Current Capacity Flow estimated for the Property.

NOW, THEREFORE, and in consideration of fees and charges specified in this Agreement, the covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the COUNTY, TENANT, and the OWNER agree as follows:

1. **Recitals.** The above Recitals are true and incorporated herein and form a material part of this Agreement.

2. **Current Capacity Flow.** Based upon the terms of the issuance of the Building Permit, the flow associated with the Property is 16,732 gpd on the day this Agreement is executed. Thereafter, the Current Capacity Flow shall equal 16,732 gpd plus the flow associated with any additional wastewater capacity purchased for the Property after the execution of this Agreement.

3. **Metering, Fees and Compliance.**

a. OWNER shall purchase the OUC meter specified on the approved construction plans at OWNER's sole cost and expense. The OWNER and TENANT shall ensure that the meter remain unobstructed for COUNTY and OUC meter reading.

b. A monthly monitoring fee, per Board of County Commissioners' Rate Resolutions, as amended from time to time, shall be assessed and shall be billed directly to the OWNER.

c. No changes to the Property use, water and wastewater plumbing or utility mains that would increase the wastewater flows for the Property from the Current Capacity Flow shall be made by the OWNER or TENANT without prior review, inspection, and written approval of the COUNTY. The COUNTY'S approval shall not be unreasonably withheld.

d. Wastewater flow will be monitored by the COUNTY, using OUC water meter readings.

e. Monitoring for compliance with the Current Capacity Flow will be based on a six (6) month rolling average of wastewater flow for the term of the Agreement. The "Billing Period Wastewater Flow" shall equal the volume (in gallons) of water consumption for the billing period divided by the number of days in that billing period. The volume for each billing period shall be calculated as the difference between the beginning and ending readings of all meters for the Property.

- i. If any Billing Period Wastewater Flow exceeds the Current Capacity Flow, the COUNTY may issue a written warning to the OWNER, with a copy to the TENANT, notifying them of the reading.
- ii. If at any time the six (6) month average Billing Period Wastewater Flow exceeds the Current Capacity Flow, the OWNER shall purchase wastewater capacity in an amount calculated by the difference between the six (6) month average Billing Period Wastewater Flow and the Current Capacity Flow. The cost of wastewater capacity (gpd) shall be calculated using the then current Orange County wastewater capital charge rates (as of the Effective Date, \$3,346.00 per ERU based on 225 gpd per ERU).
- iii. If additional wastewater capacity is purchased, as described in paragraph ii above, and at a later date a six (6) month average Billing Period Wastewater Flow exceeds the cumulative Current Capacity Flow, the OWNER shall again purchase wastewater capacity from the COUNTY as described in paragraph ii above.
- iv. In the event the TENANT purchases or otherwise provides payment for any required additional wastewater capacity on behalf of the OWNER, the TENANT acknowledges and agrees that any right to such additional wastewater capacity shall remain with the Property. Should the lease agreement between the TENANT and OWNER expire or otherwise be terminated, neither the COUNTY nor Owner shall be responsible to provide any reimbursement to the TENANT for any unused portion of the additional wastewater capacity purchased for the Property.
- v. The OWNER shall pay to the COUNTY within thirty (30) days any additional wastewater capacity charges that may be due and owing for the Property and the Facility based on the conditions set forth in this Agreement. In the event the

OWNER fails to purchase such wastewater capacity, the capital charges associated with the required additional capacity will be added to the monthly water and wastewater bill. Failure by the OWNER or TENANT to provide monthly payment including, but not limited to, capital charges (if any), past due charges, related service charges, deposits, applicable utility or public service taxes, and current charges will result in the interruption of water and wastewater services.

4. **Indemnification of the COUNTY.** OWNER and TENANT shall indemnify and hold the COUNTY harmless for any and all claims and losses for personal injury, property damage, or financial loss arising at any time from any aspect of this Agreement, other than claims and losses arising from the negligence of the COUNTY, its employees or agents.

5. **Monitoring.** The COUNTY shall initiate monitoring on the date the Facility receives its Certificate of Occupancy and shall continue for a period of five (5) years (the "Monitoring Period"), unless sooner terminated pursuant to paragraph 10 below. In the event there is a change in tenant, the COUNTY may extend the period of monitoring, not to exceed a period of five (5) years, if the use of the property is not changed. In the event of a material breach of this Agreement by OWNER or TENANT, the COUNTY may extend the Monitoring Period for a period not to exceed five (5) years from the date of said breach following written notice to OWNER and TENANT of the breach of this Agreement and provided that OWNER or TENANT has not cured such breach within 30 days following said notice. For purposes of this Agreement, "material breach" shall mean (a) the failure of OWNER (or TENANT) to pay any amounts due hereunder, following notice and ability to cure such non-payment; or (b) any failure of OWNER (or TENANT) to provide COUNTY (or its representatives) reasonable access to the meter to allow COUNTY to monitor compliance with this Agreement; or (c) any breach of section 3c. of this Agreement.

6. **Term of Agreement.** The term of this Agreement shall be for the entire five (5) year Monitoring Period, unless extended pursuant to paragraph 5 above or sooner terminated pursuant to paragraph 10 below.

7. **Sale of Property.** The OWNER'S right to sell or transfer the Property shall not be restricted by this Agreement provided, however, the OWNER shall provide the COUNTY with thirty (30) days prior notice of such sale or transfer. Furthermore, the successor party(s) in ownership shall be required to execute an acknowledgment and agreement whereby such party agrees to be bound by novation to the terms of this Agreement. Such novation agreement and acknowledgment signed by such successor party shall be delivered to the COUNTY within thirty (30) days after the date of such sale or transfer. In the event the OWNER fails to comply with the provisions set forth herein, the OWNER acknowledges and agrees to retain responsibility for the requirements under this Agreement until compliance is satisfied.

8. **Assignment of Agreement.** In the event the lease agreement between the TENANT and OWNER expires or is otherwise terminated by either party, this Agreement shall be assigned by Owner to any future tenant who shall be responsible for the requirements set forth herein until the end of the Monitoring Period, as may be extended.

9. **Recording.** The OWNER, at its sole cost, shall be responsible for the recording of a memorandum of agreement to this Agreement in the Official Public Records of Orange County, Florida, and shall ensure that any future tenant taking possession of the Facility is provided with a copy of this Agreement.

10. **Termination.** Notwithstanding anything to the contrary, this Agreement may be terminated upon written mutual consent of the OWNER and the COUNTY for which notice shall be provided in accordance with paragraph 11 of this Agreement. The COUNTY may terminate this Agreement and the provision of wastewater service to the Property as set forth herein due to any material breach (as defined in paragraph 5 above) of term of this Agreement, after providing OWNER and TENANT notice of the breach or anticipating breach, and providing the OWNER and TENANT thirty (30) days to cure. Owner may request termination of this Agreement after providing thirty (30) days' prior notice to the COUNTY, following any termination or expiration of TENANT'S lease agreement with OWNER.

11. **Notice.** Any notice required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered when (a) hand-delivered to the official hereinafter designated; (b) deposited with Federal Express or other nationally recognized overnight courier service for delivery; or (c) received when such notice is deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to a party at the address set forth opposite the party's name below, or such other address as the party shall have specified by written notice to the other party delivered in accordance therewith.

If to the COUNTY: Orange County Utilities Department
9150 Curry Ford Road
Orlando, Florida 32825
Attention: Engineering Manager

If to the OWNER: Pennsylvania Liberty Property Limited Partnership,
a/k/a Liberty Property Limited Partnership
500 Chesterfield Parkway
Malvern, PA, 19355
Attention: Stephen Whitley,
Senior Vice President

If to the TENANT: Halpern's Steak and Seafood Company LLC
1300 Gezon Parkway SW
Wyoming, MI 49509

Attention: Lawrence Bayer,
Chief Financial Officer

12. **Governing Law.** This Agreement and provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, without giving effect to any choice of law or rules thereof which may direct the application of laws of another jurisdiction. The venue for any action arising out of or related to this Agreement shall be the Ninth Judicial Circuit for Orange County, Florida.

13. **Headings.** The headings or captions of sections and descriptive headings in this Agreement are inserted for convenience only, and shall not affect the construction or interpretation hereof.

14. **Severability.** 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 and if the intention of the parties can continue to be effective. To that end, this Agreement is declared severable.

15. **No Third Party Beneficiaries.** This Agreement is solely for the benefit of the formal parties hereto and no rights or cause of action shall accrue upon or by reason hereof, to or for the benefit of, any third party not a formal party hereto.

16. **Entire Agreement.** This instrument constitutes the entire Agreement between the parties and supersedes all previous discussions, understandings, and agreements between the parties relating to the subject matter of this Agreement.

17. **Amendment.** This Agreement shall not be amended unless the amendment is in writing and approved by the COUNTY, OWNER and the TENANT.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.



ORANGE COUNTY, FLORIDA

By: Orange County Board of County Commissioners

By: *Teresa Jacobs*

Teresa Jacobs

TJ Orange County Mayor

Date: 10.6.15

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: *Katie Smith*

Date: Katie Smith

OWNER: Pennsylvania Liberty Property Limited Partnership, a/k/a Liberty Property Limited Partnership

By: Stephen J. Whitley

Print Name: Stephen J. Whitley

Title: SVP

Date: 8/25/15

Signed, sealed, and delivered in our Presence as witnesses:

Signature: Jane Warner

Printed Name: JANE WARNER

Signature: Dan Couetto

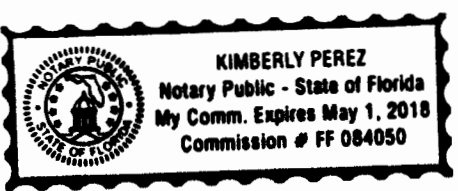
Printed Name: DAN COUETTO

STATE OF Florida
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 25 day of August, 2015, by Stephen Whitley as Sr. VP of Liberty Property Limited Partnership, on behalf of the Company. He/~~she~~ is personally known to me or has produced — as identification.

Kimberly Perez
Notary Public

Kimberly Perez
Name Printed or Stamped



My Commission Expires: May 1, 2018

TENANT: Halpern's Steak and Seafood Company
LLC

By: LBYM

Print Name: LAWRENCE BAYER

Title: CFO

Date: 8/27/2015

Signed, sealed, and delivered in our
Presence as witnesses:

Signature: Sandra Cornelius

Printed Name: Sandra Cornelius

Signature: Harvey Busby

Printed Name: HARVEY BUSBY

STATE OF Georgia
COUNTY OF Cobb

The foregoing instrument was acknowledged before me this 27th day of August, 2015, by Lawrence Bayer as CFO of Halpern's Steak and Seafood Co, on behalf of the Company. He/she is personally known to me or has produced _____ as identification.

Denise Rose
Notary Public

Denise Rose
Name Printed or Stamped

My Commission Expires: 7/25/16

DENISE ROSE
NOTARY PUBLIC
DOUGLAS COUNTY, GEORGIA

EXHIBIT "A"

LEGAL DESCRIPTION

**Plan of BLK 2 Prosper Colony D/110 BEG 264.51 FT E and 467.50 FT S of N1/4
COR RUN E 625 FT S 50 FT E 122 FT S 367.50 FT W 747 FT N 417.50 FT to POB**