

BILL NO. S-16-11-10

SPECIAL ORDINANCE NO. S-108-16

AN ORDINANCE approving CONTRACTUAL AGREEMENT TO RECEIVE HIGH STRENGTH WASTE between 101 RESOURCES INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the CONTRACTUAL AGREEMENT TO RECEIVE HIGH STRENGTH WASTE by and between 101 RESOURCES INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

5-year contract to accept up to four (4) loads per day of high strength waste generated by Nestle USA's Anderson Plant. In accordance with Chapter 51 of the Fort Wayne Code of Ordinances, City Utilities will assess 101 Resources Inc. a bulk waste charge of \$19.23 per 1,000 gallons to process the high strength waste delivered during the term of this agreement:

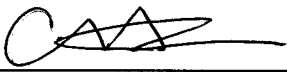
A copy of said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.



Council Member

APPROVED AS TO FORM AND LEGALITY



Carol Helton, City Attorney



CONTRACTUAL AGREEMENT

Parties:

City of Fort Wayne
200 East Berry Street
Fort Wayne, IN 46802

101 Inc.
4791 W 900 S
Pendleton, IN 46064

This is an Agreement between the above parties. The effective date of this Agreement is September 27, 2016.

Background:

City of Fort Wayne (hereafter, "City") of Fort Wayne, IN owns and operates an anaerobic digester located at 2601 Dwenger Ave, Fort Wayne, IN 46803 (hereafter, "Facility"). 101 Inc., (hereafter "101") is in the business of removing, transporting, deliquifying, feeding, recycling, and incinerating various products generated in the processing, manufacturing, and distribution of food products. 101 manages DAF Sludge ("DAF") generated by Nestle USA and intends to distribute the DAF to City for use in their anaerobic digester.

Term:

This Agreement shall remain in effect for a period of 60 months from the effective date and thereafter shall continue month to month until terminated by either party by giving six-month written notice to the other party, provided, however, that either party may terminate this Agreement upon failure of the other party to cure any breach of this Agreement within fifteen (15) days after receipt of written notice of such breach from the terminating party. This Agreement may be amended at any time with the written consent of both parties.

In addition to the above:

City will:

1. Accept up to 4 loads (6,500 gallons per load) per day DAF (provided it is produced by Nestle USA) beginning with the effective date of this agreement delivered to the City's facility that is able to accept material 24 hours a day in Fort Wayne, IN.
2. Perform its obligations under this Agreement in compliance with all applicable laws, orders or regulations, and be responsible for all requirements regarding the use of DAF generated by Nestle USA for anaerobic digestion purposes.
3. Not make any representations or warranties on behalf of 101 Inc nor act as an agent of 101 Inc.
4. Invoice 101 Inc. monthly for loads per item #8. In consideration of such compensation, City is liable for all anaerobic digestion costs during the term of this Agreement.
5. Provide a monthly report to 101 Inc showing the disposition of all loads received from 101 Inc.

4791 West 900 South Pendleton, IN 46064
Main: 765-778-1101
www.101-inc.com

101 Inc. will:

6. Deliver DAF generated by Nestle USA to the City facility in Fort Wayne, IN.
7. Not make any representations to City or to anyone as to the suitability of the DAF for any purpose and shall have no liability to City arising out of City's use of the DAF.
8. Compensate City net 30 at the rate of \$19.23 per 1,000 gallons based on 6,500 gallon load delivered during the term of this agreement.
9. Notify City of the DAF production schedule and keep City informed of any changes to that schedule as soon as possible.
10. Maintain in full force and effect during the term of this Agreement the following insurance coverage; provided, however, that if a High Risk Insurance Attachment is attached hereto, the requirements of the High Risk Insurance Attachment shall be substituted in lieu of the following requirements:

(a)	Worker's Compensation	per statutory requirements.
(b)	General Liability	\$1,000,000 minimum per / \$2,000,000 aggregate
(c)	Automobile Liability	\$1,000,000 minimum per occurrence
(d)	Products Liability	\$1,000,000 minimum per occurrence
(e)	Completed Operations Liability	\$1,000,000 minimum per occurrence

The Certificate of Insurance must show the City of Fort Wayne, its Divisions and Subsidiaries as an Additional Insured and a Certificate Holder, with 30 days notification of cancellation or non-renewal.

The Parties, and their respective directors, officers, employees, and agents shall indemnify and hold each other harmless from and against all present or future claims, liabilities, damages loss and expense (including attorney's fees, court costs, and consequential damages) arising out of or in any way connected with this Agreement, except to the extent that either party breaches its obligation under the Agreement. Each party's liability to the other for any loss, cost, claim, liability, damage, or expense (including attorneys' fees) relating to or arising out of any negligent act or omission in its performance of obligations arising out of this Agreement, shall be limited to the amount of direct damage actually incurred. Absent gross negligence or knowing and willful misconduct, which causes a loss, neither party shall be liable to the other for any indirect, special or consequential damage of any kind whatsoever.

Either party hereto shall be excused from performance of any obligation hereunder while and during such time as performance is prevented by factors beyond the reasonable control of said party, including, but not limited to acts of God.

Nothing herein shall be deemed or construed to create any partnership or joint venture between the parties. All activities carried on by City under the terms of this Agreement shall be as an independent contractor and not as an agent for or employee of 101 Inc.

This Agreement shall be binding upon the parties hereto and their successors and assigns.

Agreed this 27th day of Sept. 2016.

City of Fort Wayne ("City")

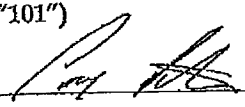
By: See attached

Name: Signature page

Title: _____

Date: _____

101 Inc. ("101")

By: 

Name: Cory Peter

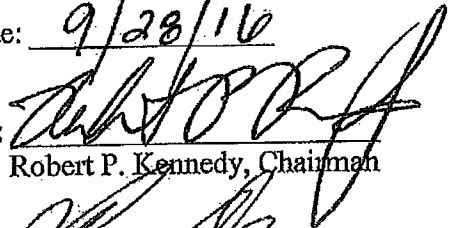
Title: President

Date: 9/27/2016

Approval of an Agreement between the City of Fort Wayne and 101 Resources to receive High Strength Waste at the Water Pollution Control Plant from Nestle's Anderson Plant.

BOARD OF PUBLIC WORKS

Date: 9/28/16

BY: 
Robert P. Kennedy, Chairman

BY: 
Kumar Menon, Member

BY: 
Mike Avila, Member

ATTEST: 
Lyndsey Richards, Clerk



Non-Disclosure and Non-Circumvention Agreement

101 Inc. (hereafter, "101") of Pendleton, IN and City of Fort Wayne (hereafter, "City") of Fort Wayne, IN desire to consider entering into a mutually beneficial business relationship which will require the exchange of certain proprietary and/or privileged information, and cooperative efforts in the pursuit of certain business objectives;

And whereas the disclosure of proprietary or privileged information of one party by the other would cause grave damage to the first;

And whereas the parties desire to protect their singular interests with existing clients, vendors, and other various business relationships;

Now, therefore, the parties enter into this non-disclosure and non-circumvention agreement effective this September 14, 2016:

1. **Non-disclosure.** The parties agree to hold various information confidential, including, but not limited to: business plans, marketing plans, ideas, processes, prices, designs, products, technical specifications, inventions, discoveries, data, trade secrets, the identity of customers and/or vendors, and any other proprietary information, disclosed by one to the other, or to any of its affiliates, in the past or in the future. The term "Confidential Information" shall mean any and all information that is disclosed by either party to the other verbally, electronically, visually, or in a written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary.

Both parties shall keep Confidential Information in strict confidence and shall not disclose it to any third party. Both parties shall only use Confidential Information in a manner consistent with the terms of this Agreement and only in furtherance of the mutually beneficial relationship between the parties. Receiving party's (hereafter, "Recipient") internal disclosure of Confidential Information shall be only to those employees or agents having a need to know such information in connection with this Agreement and only insofar as such persons are bound by a nondisclosure agreement consistent with these nondisclosure terms. A party shall promptly notify the other of any unauthorized disclosure or use of Confidential Information by any person.

This Agreement imposes no obligation upon the parties with respect to Confidential Information which either party can establish by legally sufficient evidence: (a) was in the possession of, or was rightfully known by Recipient without an obligation to maintain its confidentiality prior to receipt from the other party; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Recipient in good faith from third party having the right to disclose it without an obligation on confidentiality; (d) is independently developed by the Recipient without use of the Confidential Information; or (e) is required to be disclosed by court order or other legal

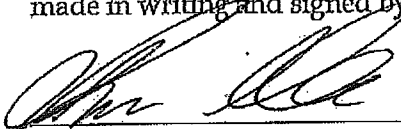
authority provided diligent efforts are undertaken to limit disclosure and prior notice is given to the other party.

2. **Non-infringement.** The parties agree that neither shall use the other's confidential information for any purpose whatsoever without prior written permission. The parties further agree that any unauthorized use of confidential information shall constitute an infringement of the owner's intellectual property rights, and shall entitle the owner to injunctive relief, and compensatory and punitive damages.
3. **Non-circumvention.** The parties each agree not to infringe upon or attempt to circumvent the other's legitimate business interests with the other's existing clients, customers, or vendors. Neither party shall in any way be restricted from continuing to do business with existing clients, customers, or vendors.
4. **Termination.** This Agreement will continue in force for five (5) years. Termination shall not remove either party's obligation of non-disclosure. This agreement may be terminated by the agreement of both parties.
5. **General.** Each party represents to the other that it is subject to no obligations, which adversely affect its performance under this Agreement. Neither party shall represent to any other person that it is the agent of the other party.

If any provision within this agreement is held to be invalid, all other provisions shall remain valid and enforceable.

This agreement constitutes the entire agreement between the parties and no other promises, representations, guarantees or agreements of any kind shall be valid unless in writing. This agreement is governed by the laws of the State of Indiana and any claims or disputes between the parties to this agreement, after first clearly communicating the dispute to the other party in writing and giving the other party 15 days to correct the dispute, shall be brought in a court of competent jurisdiction in Allen County, Indiana.

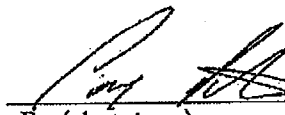
The failure of either party to act upon any right it has or upon any breach by the other party shall not constitute a waiver of that or any other right, remedy, or breach. No waiver is effective unless made in writing and signed by the waiving party.


By (signature)

Kumar Menon
Name (printed)

Director of City Utilities
Title

9/28/16
Date


By (signature)

Cory Peter
Name (printed)

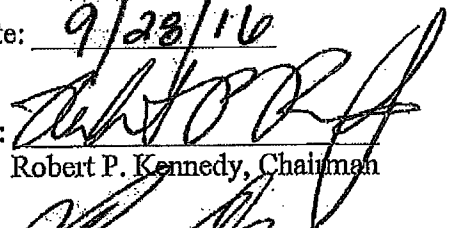
President
Title

9/27/2016
Date

Approval of an Agreement between the City of Fort Wayne and 101 Resources to receive High Strength Waste at the Water Pollution Control Plant from Nestle's Anderson Plant.

BOARD OF PUBLIC WORKS

Date: 9/23/16

BY: 
Robert P. Kennedy, Chairman

BY: 
Kumar Menon, Member

BY: 
Mike Avila, Member

ATTEST: 
Lyndsey Richards, Clerk

Interoffice Memo

Date: November 1, 2016
To: Common Council Members
From: Doug Fasick, Sr. Program Manager Energy Engineering & Sustainability Services/City Utilities Engineering 
RE: Contractual Agreement with 101 Resources Inc. to Receive High Strength Waste

Council District – City Wide

City of Fort Wayne owns and operates anaerobic digesters at the Water Pollution Control Plant located at 2601 Dwenger Ave. City Utilities has agreed to a 5 year contract with 101 Resources Inc. to accept up to four (4) loads per day of high strength waste generated by Nestle USA's Anderson Plant. This high strength waste will be fed into the plant's anaerobic digestion facility for processing and increase our production of methane gas used to provide renewable biogas fuel to the plant's on-site generation and waste heat recovery system. In accordance with Chapter 51 of the Fort Wayne Code of Ordinances, City Utilities will assess a bulk waste charge of \$19.23 per 1000 gallons to 101 Resources for processing of the high strength waste.

Implications of not being approved: If the contractual agreement is not approved, we jeopardize our ability to reliably provide methane gas to our generators at the Water Pollution Control Plant and could incur approximately \$120,000 in additional electrical costs by having to purchase retail electricity from local electric utility as well as potential loss of \$182,500 annually in tipping fee revenues.

If Prior Approval is being Requested, Justify: N/A

Council Introduction Date: November 15, 2016

CC: BOW
Matthew Wirtz
Diane Brown
Chrono
File

REPORT OF COMMITTEE ON CITY UTILITIES

December 6, 2016

Jason Arp Chair

Geoff Paddock Co-Chair

All Council Members

An Ordinance approving CONTRACTUAL AGREEMENT TO RECEIVE HIGH STRENGTH WASTE between 101 RESOURCES INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works

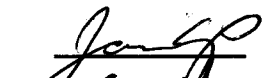
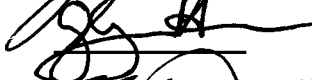
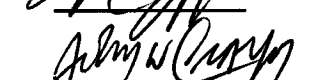
COMMITTEE ON CITY UTILITIES HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance

DO PASS

DO NOT PASS

ABSTAIN

NO REC

	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
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**LANA R. KEESLING
CITY CLERK**



Public Hearing Date: N/A.

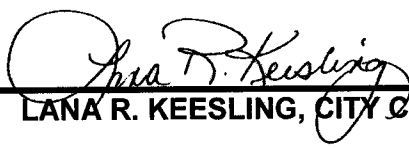
Read the first time in full and on motion by Councilman Arp.

Read the second time by title and referred to the City Utilities Committee.

Read the third time in full and on motion by Councilman Arp, placed on passage by the following vote:

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	☒	☐	☐	☐
BARRANDA	☒	☐	☐	☐
CRAWFORD	☒	☐	☐	☐
DIDIER	☒	☐	☐	☐
ENSLEY	☒	☐	☐	☐
FREISTROFFER	☒	☐	☐	☐
HINES	☒	☐	☐	☐
JEHL	☒	☐	☐	☐
PADDOCK	☒	☐	☐	☐

DATED: December 6, 2016


LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

Special Resolution No. S-16-11-10 on the 6th day of December, 2016

ATTEST:


LANA R. KEESLING
CITY CLERK


PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 7th
of December 2016, at the hour of 10:30 o'clock P.M. E.S.T.


LANA R. KEESLING, CITY CLERK

Approved and signed by me this 9TH day of December
2016, at the hour of 11:30 O'clock Am E.S.T.


THOMAS C. HENRY, MAYOR