

ORDINANCE 4381

APPROVING THE EXECUTION AND DELIVERY OF AN AMENDMENT TO AN AGREEMENT TO CONTRIBUTE TO CERTAIN INFRASTRUCTURE IMPROVEMENTS; AND OTHER MATTERS RELATING THERETO.

BE IT ORDAINED by the Mayor and Council of the City of Hartsville, South Carolina, in a meeting duly assembled:

Section 1. Findings of Fact

The City Council of the City of Hartsville, South Carolina (the “**Council**”), the governing body of the City of Hartsville, South Carolina (the “**City**”), has made the following findings of fact:

(A) The City is a municipal corporation of the State of South Carolina, and as such possesses all general powers granted by the Constitution and statutes of the State of South Carolina to such public entities, including the power to own and operate a wastewater system (the “**System**”).

(B) Industrial Properties, Inc., a South Carolina corporation (the “**Developer**”), is the owner of a tract of land (the “**Development**”) that has been annexed into the City that it has subdivided and begun to develop for residential use (the “**Project**”).

(C) Pursuant to Article VI, Section 61.4 of the City’s Subdivision and Development Regulations, the Developer shall connect the properties within the Development to the System and shall be responsible for the costs of any tap fees, extensions, or improvements that are necessary to connect properties within the Development to the System.

(D) Pursuant to Ordinance 4178 dated December 2, 2014, the City agreed to defray some costs related to the construction and installation of the wastewater infrastructure (the “**Wastewater Improvements**”) necessary to connect the Development to the System. Pursuant to Section 82-28(4) of the City’s Code of Ordinances, the City may consider defraying such costs where such contribution is in the best interest of the City.

(E) The City and the Developer entered an Agreement to Contribute to Certain Infrastructure Improvements (the “**Agreement**”), pursuant to which (i) the Developer agreed to (1) annex the Development into the City, (2) install the Wastewater Improvements within the Development and dedicate the Wastewater Improvements to the City, and (3) secure the repayment of the Amount Advanced through the execution and delivery of a Note (the “**Note**”) and a Personal Guarantee of the principals of the Developer (the “**Guarantee**”), and (ii) the City agreed to (1) advance the advance funds to the Developer as a contribution to the cost of certain Wastewater Improvements to serve the Development (the “**Amount Advanced**”), and (2) accept dedication of the Wastewater Improvements upon completion in accordance with Plans and the City’s standards.

(F) The City and the Developer further agreed that the City would forgive the Amount

Advanced and the Note as set forth in Section 4.05 of the Agreement, pursuant to which, (i) the City was to forgive one-half of the then-outstanding principal amount of the Amount Advanced upon final approval of the subdivision of all lots within the Development and the completion of the installation or construction, to the satisfaction, as applicable, of the City, Darlington County or the State, of any and all infrastructure required for the Development, and (ii) the City was to forgive the remaining one-half of the then-outstanding principal amount of the Amount Advanced, including any accrued interest thereon, at such time as Certificates of Occupancy have been issued for ten (10) residences constructed on lots within the Development.

(G) The Wastewater Improvements and all other infrastructure required for the Development been completed by the Developer and, accordingly one-half of the Amount Advanced has been forgiven by the City. As of the Effective Date, the Developer has not yet completed, and Certificates of Occupancy have not yet been issued, for ten residences constructed on lots within the Development; therefore, the remaining one-half of the Amount Advanced has not been forgiven.

(H) The Developer has requested that the City re-amortize the unforgiven portion of the Amount Advanced and the interest accrued thereon, which is the sum of \$95,482.63, for a period of five years, to be secured by an amended promissory note (the “*Amended Note*”).

(I) The City Council reaffirms its support of residential development in appropriate areas of the City in order to further expand the System, to increase property values to generate additional property tax revenue and provide affordable, quality housing within the City. The City further reaffirms that through providing monetary support to offset certain costs of the Wastewater Improvements, the City’s support of the Project continues to promote a valid public purpose and that the benefits to the City of the completion of the Development are greater than the cost of any necessary economic development incentives being provided by the City, and that by re-amortizing the New Amount Advanced, the City is promoting the completion of the Development at an earlier date than would otherwise be the case.

(J) The City Council further finds hereby finds that the revised information provided by the Developer regarding the Project is reasonable and, given these benchmarks, it is likely that the City’s investment in Wastewater Improvements will be fully recouped by the City in the form of tap-fees, wastewater charges and additional property taxes within the five-year term of the Amended Note.

(K) The City desires to execute an Amendment to the Agreement to Contribute to Certain Infrastructure Improvements (the “*Amended Agreement*”) with the Developer to re-amortize the amount owed to the City with respect to the principal of and accrued interest on the Note and amend the terms with respect to the forgiveness thereof.

(L) In the event the remaining benchmarks for the completion of the Development are not met, the City has ensured that any amounts contributed towards the costs of the Wastewater Improvements will be repaid to the City pursuant to the Amended Note, a copy of which is attached at Exhibit C to the Amended Agreement, given by the Developer in the amount of the City’s contribution to the costs of the Wastewater Improvements and an Amended Personal Guaranty, a

copy of which is attached as Exhibit D to the Amended Agreement (the “*Amended Personal Guaranty*”), to be executed by the principals of the Developer in their individual capacities.

(M) The Council hereby finds and determines that the Amended Agreement, as negotiated by the City Manager, shall be in the best interest of the citizens of the City.

Section 2. Approval of the Amended Agreement and Related Documents

The Council has reviewed existing drafts of the Amended Agreement, along with the related Amended Note and Amended Personal Guaranty (the “*Documents*”) and approves of the terms thereof. The Council hereby authorizes the execution and delivery of the Documents. The City Manager, with the advice of the City’s legal counsel, is hereby authorized to approve of any minor modifications and revisions that do not materially deviate from the drafts of the Documents submitted to Council. The Documents shall be executed and delivered on behalf of the City by the City Manager and attested to by the clerk. Upon such execution, the Council shall be timely informed of the execution of the Documents and informed as to any substantial deviation of terms in the current draft. The consummation of the transactions and undertakings described in the Amended Agreement, and such additional transactions and undertakings as may be determined by the City Manager in consultation with the Council to be necessary or advisable in connection therewith, are hereby approved.

DONE AND ORDAINED IN COUNCIL ASSEMBLED, this ___ day of January, 2020.

CITY OF HARTSVILLE

(SEAL)

By: _____
Carl M. (Mel) Pennington IV, Mayor

ATTEST

By: _____
Sherron L. Skipper, City Clerk

First Reading: January 14, 2020

Public Hearing:

Final Reading: