



AGENDA
CITY OF HARTSVILLE, SOUTH CAROLINA
SPECIAL CITY COUNCIL MEETING
TUESDAY, MAY 1, 2018 - 5:30 PM
CITY COUNCIL CHAMBERS - 100 EAST CAROLINA AVENUE

PURSUANT TO FREEDOM OF INFORMATION ACT SC CODE 30-4-80: WRITTEN NOTICE WAS DELIVERED TO THE PRESS BY EMAIL ON FRIDAY, APRIL 27, 2018 AND DULY POSTED AT CITY HALL LOCATED AT 100 EAST CAROLINA AVENUE.

1. CALL TO ORDER - MAYOR
2. INVOCATION AND PLEDGE
3. APPROVAL OF MINUTES
 - a. MOTION TO WAIVE READING OF AND APPROVE MINUTES OF APRIL 10, 2018 REGULAR CITY COUNCIL MEETING.

PRESENTATIONS

4. Proclamation

MANAGER UPDATE

5. Miscellaneous Items from City Manager

UNFINISHED BUSINESS

6. PUBLIC HEARING AND FINAL READING ORDINANCE 4330: TO LEASE A PORTION OF PROPERTY AT 410 BELL AVENUE FROM THOMAS E GOODSON SR. AND THOMAS E. GOODSON JR. FOR INSTALLATION AND MAINTENANCE OF MONITORING EQUIPMENT.
 - a. Reading by Title and Presentation - City Manager
 - b. Open/Close Public Hearing (state name and address for record) - Mayor
 - c. Approval of Final Reading and Waiving of Complete Reading
7. PUBLIC HEARING AND FINAL READING ORDINANCE 4331: TO LEASE THE PROPERTY AT 149 WEST CAROLINA AVENUE TO DARLINGTON COUNTY HUMANE SOCIETY.
 - a. Reading by Title and Presentation - City Manager
 - b. Open/Close Public Hearing (state name and address for record) - Mayor
 - c. Approval of Final Reading and Waiving of Complete Reading

NEW BUSINESS

8. RESOLUTION 05-18-01: TO AUTHORIZE A LEASE-PURCHASE FINANCING IN AN AMOUNT NOT EXCEEDING ONE MILLION DOLLARS (\$1,000,000), AND OTHER MATTERS RELATING THERETO.
9. RESOLUTION 05-18-02: APPROVING AN EXCLUSIVE BEVERAGE POURING RIGHTS MASTER AGREEMENT BY AND BETWEEN THE CITY OF HARTSVILLE, SOUTH CAROLINA AND THE PEPSI COLA OF FLORENCE, LLC; AND OTHER MATTERS RELATED THERETO.
10. RESOLUTION 05-18-03: APPROVING A PROPERTY MAINTENANCE AGREEMENT BY AND BETWEEN THE CITY OF HARTSVILLE, SOUTH CAROLINA AND DARLINGTON COUNTY

HABITAT FOR HUMANITY; AND OTHER MATTERS RELATED THERETO.

11. RESOLUTION 05-18-04: TO APPROVE PROPOSAL FOR BYERLY PARK PLAYGROUND EQUIPMENT.
12. RESOLUTION 05-18-05: APPROVING AND RATIFYING A WIRELESS NETWORK AGREEMENT BY AND BETWEEN THE CITY OF HARTSVILLE, SOUTH CAROLINA AND THE TENGOINTERNET, INC.; AND OTHER MATTERS RELATED THERETO.
13. FIRST READING ORDINANCE 4332: AUTHORIZING THE LEASE OF A PORTION OF THE PROPERTY AT 147 WEST CAROLINA AVENUE TO THE GOVERNOR'S SCHOOL OF SCIENCE AND MATH (GSSM) FOUNDATION.
 - a. Reading by Title and Presentation - City Manager
 - b. Approval of First Reading and Waiving of Complete Reading
14. FIRST READING ORDINANCE 4333: TO AMEND THE LEASE TO CELLCO PARTNERSHIP D/B/A VERIZION WIRELESS FOR THEIR INSTALLATION OF CELLULAR EQUIPMENT ON THE POOLE ST WATER TOWER.
 - a. Reading by Title and Presentation - City Manager
 - b. Approval of First Reading and Waiving of Complete Reading

ADJOURNMENT

Please turn off or silence all mobile devices.

The City of Hartsville located at 100 E. Carolina Avenue, is an accessible facility.
For assistance call 383-3018 between 8:30am and 4:30pm Monday through Friday.



**REQUEST FOR
COUNCIL AGENDA**
The City of Hartsville

Agenda Date:
5/1/2018

To: City Council
From: City Manager

Ordinance Number: Resolution Number: - REGULAR MEETING

ORDINANCE/RESOLUTION CAPTION:

April 10, 2018 Regular Meeting Minutes.

IMPACT IF DENIED:

ATTACHMENTS:

Description

- April 10, 2018 Regular City Council Meeting Minutes



MINUTES

CITY OF HARTSVILLE, SOUTH CAROLINA
PUBLIC HEARINGS AND REGULAR CITY COUNCIL MEETING
TUESDAY, APRIL 10, 2018 – 5:30 PM
COUNCIL CHAMBERS - 100 EAST CAROLINA AVENUE

Mayor/Council:

Mayor Pennington
Mayor Pro-Tem Andrews
Councilmember Braddock
Councilmember Gammage
Councilmember Mack
Councilmember Shirley
Councilmember Wilson
Attorney – not present
Press

Executive Staff:

City Manager Zeigler
City Clerk Skipper
Fire Chief Burr
Finance Director Caulder
Public Service Director Slatton

PURSUANT TO FREEDOM OF INFORMATION ACT SC CODE 30-4-80: WRITTEN NOTICE WAS DELIVERED TO THE PRESS BY EMAIL ON FRIDAY, APRIL 6, 2018 AND DULY POSTED AT CITY HALL LOCATED AT 100 EAST CAROLINA AVENUE; AN ACCESSIBLE FACILITY.

Mayor Pennington called the meeting to order at 5:38pm and asked Councilmember Gammage to lead in the invocation and Pledge of Allegiance.

MOTION TO WAIVE READING OF AND APPROVE MINUTES OF MARCH 13, 2018 REGULAR CITY COUNCIL MEETING AND THE MARCH 20, 2018 SPECIAL CITY COUNCIL MEETING - APPROVED.
Motion: Gammage; Second: Mack; Carried: All ayes.

PRESENTATIONS

Recognition of New Hires/Promotions – Finance Director Karen Caulder introduced Juan Encarnacion, Waterpark General Manager. He comes from wet 'n' wild in Las Vegas. Juan thanked everyone for their support and announced that he is buying a house in Mayor Pro-Tem Andrews' district.

Proclamations were presented to the Dampier's for Congenital Diaphragmatic Hernia Day to elevate the awareness and understanding of this rare birth defect. Proclamations were also read for sexual assault awareness month and Fair Housing Month.

MANAGER UPDATE

1. Congratulations to Councilmember Gammage on his engagement to Carmen Taylor.
2. Congratulations to Hemming Hemmingsen, (Airport Fixed Base Operator (FBO), and Sandy Brown, Planning Commissioner, on their recent marriage.
3. The city will be hosting Ethics Training on April 25, 2018, presented by the new Executive Director of the South Carolina Ethics Commission.

CONSENT AGENDA - Received as Information Only

UNFINISHED BUSINESS

PUBLIC HEARING AND FINAL READING ORDINANCE 4327: TO AMEND HARTSVILLE CODE OF ORDINANCES APPENDIX A – ZONING ARTICLE VI – GENERAL PROVISIONS SECTION 7 “OFF STREET

PARKING AND LOADING” BY ADDING (h) BICYCLE PARKING (i) SURFACE AND MARKINGS AND (j) ACCESSIBLE PARKING FOR DISABLED PERSONS – APPROVED.

Open/Close Public Hearing: No public input.

Approval of Final Reading and Waiving of Complete Reading: Motion: Andrews; Second: Mack;

Carried: with all ayes.

PUBLIC HEARING AND FINAL READING ORDINANCE 4328: TO AMEND HARTSVILLE CITY CODE CHAPTER HISTORIC PRESERVATION SECTION 11-21 “DESIGN REVIEW GUIDELINES FOR CITY’S HISTORIC DISTRICT SUBSECTION (a) CITY’S HISTORIC DISTRICT (1) HISTORIC PROPERTIES BY THE ADDITION OF 106 EAST CAROLINA AVENUE AND 154 MANTISSA ROW (TAX MAP# 056-06-02-059), 108 EAST CAROLINA AVENUE AND 152 MANTISSA ROW (TAX MAP #056-06-02-036 & 056-06-02-60) A PORTION OF THE FORMER SOUTHERN CANDY KITCHEN AND SUBSECTION (b) GENERAL CRITERIA - APPROVED.

Open/Close Public Hearing: No public input.

Approval of Final Reading and Waiving of Complete Reading: Motion: Mack; Second: Gammage;

Carried: with all ayes.

PUBLIC HEARING AND FINAL READING ORDINANCE 4329: AN ORDINANCE OF THE CITY OF HARTSVILLE, SOUTH CAROLINA, AMENDING PROVISIONS OF THE CODE OF ORDINANCES OF THE CITY REQUIRING ANNEXATION COMMITMENTS IN ORDER FOR PROPERTIES LOCATED OUTSIDE OF THE CITY TO CONNECT TO THE CITY’S UTILITY SERVICES, AND OTHER MATTERS RELATED THERETO – APPROVED.

Open/Close Public Hearing: No public input.

Approval of Final Reading and Waiving of Complete Reading: Motion: Andrews; Second: Shirley;

Carried: with all ayes.

NEW BUSINESS

RESOLUTION 04-18-01: APPROVING A PROPERTY MAINTENANCE AGREEMENT BY AND BETWEEN THE CITY OF HARTSVILLE, SOUTH CAROLINA AND THE HARTSVILLE PUBLIC DEVELOPMENT CORPORATION; AND OTHER MATTERS RELATED THERETO – APPROVED.

Mayor Pennington recused himself from deliberation and vote because he is President of the Hartsville Public Development Corporation. He handed the gavel to Mayor Pro-Tem Andrews.

Motion: Gammage; Second: Mack; Carried: with all ayes.

Mayor Pennington took Executive Privilege and introduced Phillip Gaillard, Veterans and Community Outreach Coordinator, for Congressman Tom Rice’s Office. He thanked him for attending and representing the Congressman.

RESOLUTION 04-18-02: APPROVAL OF AIRPORT ENGINEERING AND PLANNING SERVICES FOR HARTSVILLE REGIONAL AIRPORT – APPROVED.

Motion: Andrews; Second: Braddock; Discussion: FBO, Hemming Hemmingsen, explained that the Federal Aviation Administration (FAA) in Charleston has been very helpful to us in developing a plan for safety items first, but we must have an engineering consultant to meet FAA requirements. Carried: with all ayes.

RESOLUTION 04-18-03: APPROVAL FOR HARTSVILLE POLICE DEPARTMENT TO ENTER INTO AN AGREEMENT WITH FLORENCE COUNTY EMERGENCY MANAGEMENT DIVISION – APPROVED.

Motion: Mack; Second: Gammage; Carried: with all ayes.

FIRST READING ORDINANCE 4330: TO LEASE A PORTION OF PROPERTY AT 410 BELL AVENUE FROM THOMAS E GOODSON SR. AND THOMAS E. GOODSON JR. FOR INSTALLATION AND MAINTENANCE OF MONITORING EQUIPMENT – APPROVED.

Approval of First Reading and Waiving of Complete Reading: Motion: Mack; Second: Andrews; Carried: with all ayes.

FIRST READING ORDINANCE 4331: TO LEASE THE PROPERTY AT 149 WEST CAROLINA AVENUE TO DARLINGTON COUNTY HUMANE SOCIETY – APPROVED.

Approval of First Reading and Waiving of Complete Reading: Motion: Andrews; Second: Gammage; Carried: with all ayes.

EXECUTIVE SESSION

MOTION: TO ENTER EXECUTIVE SESSION PURSUANT TO SC CODE FOIA SECTION 30-4- 70(a)(1) FOR DISCUSSION OF APPOINTMENT TO DARLINGTON COUNTY CAPITAL PROJECT SALES TAX COMMISSION – APPROVED.

Motion: Andrews; Second: Gammage; Carried: with all ayes.

MOTION: TO VERIFY THAT ONLY THE ITEMS STATED IN THE MOTION TO ENTER EXECUTIVE SESSION WERE DISCUSSED DURING EXECUTIVE SESSION – APPROVED.

Motion: Andrews; Second: Braddock; Carried: with all ayes.

UPON RETURNING TO OPEN SESSION, COUNCIL MAY TAKE ACTION ON MATTERS DISCUSSED IN EXECUTIVE SESSION.

RESOLUTION 04-18-04: APPOINTMENT TO DARLINGTON COUNTY CAPITAL PROJECT SALES TAX COMMISSION – APPROVED.

Motion: Andrews to appoint Bobby McGee to represent the City on the Darlington County Capital Project Sales Tax Commission; Second: Braddock; Carried: All ayes.

ADJOURNMENT: Without objection at 6:43pm.

Carl M. (Mel) Pennington IV, Mayor

ATTEST: _____
Sherron L. Skipper, CMC, City Clerk



REQUEST FOR
COUNCIL AGENDA
The City of Hartsville

Agenda Date:
5/1/2018

To: City Council
From: City Manager

Ordinance Number: Resolution Number: - SPECIAL MEETING

ORDINANCE/RESOLUTION CAPTION:

Municipal Clerks Week May 6 - 12, 2018

ATTACHMENTS:

Description

- ▣ Municipal Clerks Week Proclamation



Proclamation



TO RECOGNIZE AND HONOR THE VALUABLE CONTRIBUTIONS THAT MUNICIPAL CLERKS MAKE TO CITIES AND TOWNS IN SOUTH CAROLINA AND TO RECOGNIZE THE 40TH ANNIVERSARY OF THE MUNICIPAL FINANCE OFFICERS, CLERKS AND TREASURERS ASSOCIATION, AN AFFILIATE OF THE MUNICIPAL ASSOCIATION OF SOUTH CAROLINA.

WHEREAS, the position of municipal clerk is the only municipal staff role that is required by state law, regardless of a municipality's size or form of government and all 271 cities and towns in the state are required to have a municipal clerk; and

WHEREAS, Hartsville's City Clerk, Sherron Skipper, plays a critical and varied role to support the mayor, city council and city staff; and

WHEREAS, municipal clerks' responsibilities under state law include giving notice of meetings to council members and the public, keeping minutes of its proceedings, and performing other duties; and

WHEREAS, regardless of city size, municipal clerks have seen their roles and responsibilities expand with changing times, with advancements in software and hardware, municipal clerks have become increasingly adept/skilled at using technology to prepare materials for meeting agenda packets, to record meeting minutes and to manage public records; and

WHEREAS, municipal clerks get their professional training from the South Carolina Municipal Finance Officers, Clerks and Treasurers Association, an affiliate organization of the Municipal Association of South Carolina, celebrating its 40th anniversary this year; and

WHEREAS, the South Carolina General Assembly has declared the week of May 6 – 12, 2018, as Municipal Clerks Week along with the International Institute of Municipal Clerks as the 49th Annual Municipal Clerks Week.

NOW, THEREFORE, I, Carl M. (Mel) Pennington IV, Mayor of the City of Hartsville in the State of South Carolina do hereby proclaim May 6 – 12, 2018 as

"MUNICIPAL CLERKS WEEK"

to recognize and honor the valuable contributions that our City Clerk Sherron Skipper makes to our city.



IN WITNESS THEREOF, I hereunto set my hand and cause to be affixed the Seal of the City of Hartsville.


Carl M. (Mel) Pennington IV, Mayor



REQUEST FOR
COUNCIL AGENDA
The City of Hartsville

Agenda Date:
5/1/2018

To: City Council
From: City Manager

Ordinance Number: Resolution Number: - REGULAR MEETING

ORDINANCE/RESOLUTION CAPTION:

Misc Items from City Manager.



REQUEST FOR
COUNCIL AGENDA
The City of Hartsville

Agenda Date:
5/1/2018

To: City Council
From: City Manager

Ordinance Number: 4330 Resolution Number: - REGULAR MEETING

ORDINANCE/RESOLUTION CAPTION:

To lease a portion of property at 410 Bell Ave for installation and maintenance of monitoring equipment.

ATTACHMENTS:

Description

- ▣ Ordinance 4330
- ▣ Lease Agreement
- ▣ Location Map

ORDINANCE 4330

TO LEASE A PORTION OF PROPERTY AT 410 BELL AVENUE FROM THOMAS E. GOODSON SR. AND THOMAS E. GOODSON JR. FOR INSTALLATION AND MAINTENANCE OF MONITORING EQUIPMENT.

WHEREAS, the City of Hartsville seeks to install cameras for the monitoring of illicit activity in order to increase the safety and well-being of citizens; and,

WHEREAS, land owners Thomas E. Goodson Sr. and Thomas E. Goodson Jr. do willingly commit to lease a portion of their land to the City to allow for the installation of such monitoring equipment; and,

WHEREAS, leasing this portion of land is necessary to install and access this equipment for continued maintenance.

NOW, THEREFORE BE IT ORDAINED, by the Mayor and Council of the City of Hartsville that leasing a portion of property at 410 Bell Avenue from Thomas E. Goodson Sr. and Thomas E. Goodson Jr. from May 11, 2018 until that time when either party seeks to terminate the lease, at a one-time cost of \$1.00 (one dollar) is hereby approved.

NOW, THEREFORE BE IT FURTHER ORDAINED, by the Mayor and Council of the City of Hartsville that the City Manager is hereby authorized to execute the negotiated lease agreement document.

NOW, THEREFORE BE IT FINALLY ORDAINED IN MEETING DULY ADVERTISED AND ASSEMBLED on the ____ day of _____ 2018 and to become effective upon final reading.

Carl M. (Mel) Pennington IV, Mayor

ATTEST: _____
Sherron L. Skipper, CMC, City Clerk

First Reading: April 10, 2018
Public Hearing:
Final Reading:

WHEREAS, the LICENSEE desires to use an agreed portion of LICENSOR'S PREMISES, identified in Attachment A, for purposes of affixing thereto surveillance cameras and power equipment mounted upon a pole owned by LICENSEE, and the LICENSOR is willing to provide attachment locations upon the said PREMISES for LICENSEE to affix and maintain its said surveillance cameras.

1. Premises. LICENSOR hereby licenses to LICENSEE the identified portion of the LICENSOR'S PREMISES necessary to enable LICENSEE to erect, maintain, repair, replace and operate its said surveillance cameras.

3. LICENSEE shall repair or replace any portion of LICENSOR'S PREMISES which may be damaged by LICENSOR during the term of this License Agreement.

5. TERM: This Agreement shall run until either party requests termination. Should the LICENSOR relinquish ownership of the real estate property in question, they shall notify the LICENSEE in adequate time to remove items here outlined, and upon that time the contract shall terminate.

7. Interference: LICENSOR and LICENSEE shall at all times exercise the greatest care and judgement to prevent damage to the other.

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON) PROBATE FOR LICENSEE

PERSONALLY appeared before me _____ and made oath that s/he along with the above named witness saw the within named CITY OF HARTSVILLE, as LICENSEE, sign, seal this LICENSE AGREEMENT, and that they witnessed the said LICENSEE’S execution thereof in the presence of each other.

WITNESS

SWORN TO and subscribed before me
this _____ day of _____, 2018.

Notary Public for South Carolina
My Commission Expires : _____

Attachment A

The LICENSEE desires to use an agreed portion of LICENSOR’S PREMISES, identified as:

Land Lease for Camera Installation: 410 Bell Avenue



KEY: ● Approximate pole placement

Property Info:
410 Bell Avenue
Tax Map #: 056-09-03-046
Land owners: Thomas E Goodson Sr. & Thomas E Goodson Jr.



**REQUEST FOR
COUNCIL AGENDA**
The City of Hartsville

Agenda Date:
5/1/2018

To: City Council
From: City Manager

Ordinance Number: 4331 Resolution Number: - REGULAR MEETING

ORDINANCE/RESOLUTION CAPTION:

Ordinance to lease property at 149 W Carolina Ave to Humane Society

BACKGROUND SUMMARY:

Darlington Co. Humane Society has leased this space since 2016

IMPACT IF DENIED:

Loss of lease revenue

IMPACT IF APPROVED:

Payment of 500.00 monthly

ATTACHMENTS:

Description

- ▣ Ordinance 4331
- ▣ Lease

ORDINANCE 4331

TO LEASE THE PROPERTY AT 149 WEST CAROLINA AVENUE TO DARLINGTON COUNTY HUMANE SOCIETY.

WHEREAS, the City of Hartsville owns the building at 149 West Carolina Avenue; and,

WHEREAS, Darlington County Humane Society wishes to lease the property for use as retail space; and,

NOW, THEREFORE BE IT ORDAINED, by the Mayor and Council of the City of Hartsville that leasing the building at 149 West Carolina Avenue to Darlington County Humane Society for a one year term beginning May 1, 2018 and ending April 30, 2019 for \$500.00 (five hundred dollars) a month is hereby approved.

NOW, THEREFORE BE IT FURTHER ORDAINED, by the Mayor and Council of the City of Hartsville that the City Manager is hereby authorized to execute the negotiated lease agreement document.

NOW, THEREFORE BE IT FINALLY ORDAINED IN MEETING DULY ADVERTISED AND ASSEMBLED on the ____ day of _____, 2018 and to become effective upon final reading.

Carl M. (Mel) Pennington IV, Mayor

ATTEST: _____
Sherron L. Skipper, CMC, City Clerk

First Reading: 04/10/2018

Public Hearing:

Final Reading:

THIS AGREEMENT is made and entered by and between **THE CITY OF HARTSVILLE**, hereafter the **LANDLORD**, as owner of the leasehold property described and identified here below, and **DARLINGTON COUNTY HUMANE SOCIETY**, hereafter the **TENANT**.

WITNESSETH:

LEASEHOLD PROPERTY: The **LANDLORD** agrees to lease unto the **TENANT** the Office Building located at 149 West Carolina Ave. The said building is located in the City of Hartsville, County of Darlington, and State of South Carolina.

PARKING: **TENANT'S** employees, agents, and contractors shall have the right to park on the gravel and asphalt areas behind the leasehold property which are not reserved for other businesses. The **LANDLORD** may specify parking to be used by the **TENANT** in the future.

TERM OF LEASE: This lease shall run for a period of one (1) year, from the first day of May 01, 2018, to the last day April, 2019.

RENTAL PAYMENTS: **TENANT** agrees to pay monthly amounts of five hundred dollars (\$500) rent for the said leasehold premises due on the first day of each month. In the event such payment is not made within ten (10) days after it is due, the **TENANT** shall pay the **LANDLORD** a late charge of \$100.00.

OTHER CONSIDERATION: **TENANT** agrees to pay any ad valorem property taxes related to the leasehold premises during the term of this lease or any extensions hereof which the **LANDLORD** may be held responsible for.

FORFEITURE: notwithstanding the foregoing, if any monthly payment is more than thirty (30) days late, the **LANDLORD** shall have the option to declare all the **TENANT'S** rights hereunder forfeited, and the **LANDLORD**, may proceed without notice to eject the **TENANT** and enforce the collection of rents that are in arrears in any manner provided by law, together with all costs and attorney's fees incurred by the **LANDLORD** in so doing.

LIEN CREATED IN FAVOR OF LANDLORD: **TENANT** stipulates and covenants that all property, motor vehicles, goods, and merchandise and all other property placed in and upon the rental premises is owned by the **TENANT** in its own right, and shall become subject to the statutory lien for unpaid rents, arrearages, and late rent payments.

ALTERATIONS TO LEASEHOLD PROPERTY: **TENANT** shall not be permitted to make any changes to the leasehold property without advance written approval from the **LANDLORD** and all such changes to the leasehold premises shall become the property of the **LANDLORD**.

RIGHTS AND RESPONSIBILITIES:

TENANT shall be responsible for the payment of any utility bills related to the **TENANT'S** occupancy and use of the leasehold premises.

TENANT shall be responsible for any damages done on the premises either by the **TENANT**, its agents, servants, or employees, and the **TENANT** shall, at **TENANT'S** own expense, make all repairs of such damage.

TENANT shall surrender the leasehold property back to the **LANDLORD** at the end of the term of this lease agreement in broom clean, good order and condition, reasonable wear and tear excepted.

LANDLORD shall not be responsible to the **TENANT**, its agents, servants, or employees for any damages which may be caused by water, storm, sleet, snow or for any other damages whatsoever in any manner caused by the occupancy of the said leasehold premises.

TENANT shall be responsible to maintain renter's insurance during the term of this agreement and any extensions thereof, including casualty or theft insurance, on all personal property which the **TENANT** maintains within the leasehold premises.

TENANT shall, at **TENANT'S** expense, obtain and maintain in force for the mutual benefit of **TENANT** and the **LANDLORD** a commercial general liability insurance policy with a combined minimum limit of \$1,000,000.00.

LANDLORD shall maintain casualty insurance coverage on the improvements on the leasehold premises to protect the **LANDLORD'S** interest, but **LANDLORD** shall not be responsible for any loss of the **TENANT'S** personal property through casualty or theft during the occupancy of the premises.

TENANT SHALL HOLD LANDLORD HARMLESS. Notwithstanding any other provision of this agreement, the **TENANT** agrees to hold the **LANDLORD** harmless from any and all claims for damages or injuries that may be made against the **LANDLORD** arising from the **TENANT'S** use of the leasehold premises during the term of this lease or any extensions hereof.

PEACEFUL OCCUPATION OF LEASEHOLD PREMISES. Subject to the other conditions of this agreement, **LANDLORD** guarantees **TENANT'S** peaceful occupation of the leasehold premises during the term of this agreement or any extensions thereof, **PROVIDED HOWEVER**, the **LANDLORD** shall have the right to enter the leasehold premises for the purpose of viewing the premises to see that no waste or damage is being committed and for purposes of showing the leasehold premises to prospective purchasers.

LEASE NOT ASSIGNABLE. This lease is not assignable and the **TENANT** shall not sublet any portion of the leasehold premises without the written consent of the **LANDLORD**.

EARLY TERMINATION OF LEASE. The **TENANT** shall opt out of this lease agreement with six (6) months advanced written notice to **LANDLORD**.

RECITALS. This lease agreement supersedes all prior written or oral agreements and can be amended only through a written agreement signed by both parties; this lease agreement is entered into for good and valuable consideration, which the parties hereby acknowledge; this lease agreement is binding upon both parties, their successors and assigns; and this lease agreement is entered by the parties of their own free will and accord.

This lease agreement is entered into this _____ day of _____, 2018.

Natalie M. Zeigler
City Manager
City of Hartsville
PO Drawer 2497
Hartsville, SC 29551

Kyle Segars
Charter Member
Darlington County Humane Society
PO Box 1655
Hartsville, SC 29551

WITNESSES:

WITNESSES:

Attest: Sherron L. Skipper, City Clerk

{Seal}



REQUEST FOR
COUNCIL AGENDA
The City of Hartsville

Agenda Date:
5/1/2018

To: City Council
From: City Manager

Ordinance Number: Resolution Number: 05-18-01 - SPECIAL MEETING

ORDINANCE/RESOLUTION CAPTION:

City has determined the need to acquire various vehicles and equipment through lease-purchase.

ATTACHMENTS:

Description

- ▣ Resolution 05-18-01

RESOLUTION 05-18-01

TO AUTHORIZE A LEASE-PURCHASE FINANCING IN AN AMOUNT NOT EXCEEDING ONE MILLION DOLLARS (\$1,000,000), AND OTHER MATTERS RELATING THERETO.

WHEREAS, the City of Hartsville, South Carolina (the “**City**”) is a municipal corporation of the State of South Carolina, located in Darlington County, South Carolina, and as such possesses all general powers granted to municipal corporations;

WHEREAS, the City has determined that the need exists to acquire various vehicles and equipment, all generally described on Exhibit A attached hereto (collectively, the “**Equipment**”);

WHEREAS, the Equipment is essential to the operations of the City;

WHEREAS, the Equipment shall be acquired by and titled in the name of the City; and

WHEREAS, the City has determined to negotiate with financial institutions and receive proposals to finance the Equipment.

BE IT THEREFORE RESOLVED, as follows:

1. The City hereby determines to finance the acquisition of the Equipment (the “**Financing**”). The City hereby authorizes the City Manager of the City (the “**City Manager**”) to negotiate the Financing with certain financial institutions and award the Financing to the lessor that the City Manager, in her sole discretion, determines. To the extent the City Manager has already begun such negotiations, all such actions associated therewith are ratified and approved in their entirety. The Financing may be separated into multiple series of obligations, which may be issued on tax-exempt and/or taxable basis as determined by counsel to the City. The amount of the Financing, including any costs of issuance associated therewith, shall not exceed \$1,000,000 (the “**Lease Amount**”) and the final Lease Amount, term, closing date, and other material terms for the Financing shall be determined by the City Manager.

2. All financing contracts and all related documents for the closing of the Financing (the “**Financing Documents**”) shall be consistent with the foregoing terms. The City Manager is hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable to carry out the Financing as contemplated by the provisions of this resolution (this “**Resolution**”).

3. The City Manager is hereby directed and authorized to hold executed copies of the Financing Documents until the conditions for delivery of the Financing Documents have been completed to her satisfaction. The Financing Documents shall be in such final forms as the City Manager shall approve, with the City Manager’s release of any Financing Document for delivery

constituting conclusive evidence of such officer's final approval of the final form of any of the Financing Documents.

4. The City shall not take or omit to take any action the taking or omission of which shall cause its interest payments on the Financing to be includable in the gross income for federal tax purposes of the registered owners of the Financing. To the extent the City does not intend to issue more than \$10 million of tax-exempt obligations in calendar year 2018, the City hereby designates the Financing as a "qualified tax-exempt obligation" for the purpose of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

5. The City intends that the adoption of this Resolution will be a declaration of the City's official intent to reimburse expenditures for the Equipment that are to be financed from the proceeds of monies received under the Financing.

6. The City understands that certain costs of issuance are associated with the Financing and the City covenants and agrees that all such costs will be timely paid upon the closing of the Financing Documents and may be included in the Lease Amount.

7. All prior actions of City officers in furtherance of the purposes of this Resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this Resolution are hereby repealed, to the extent of the conflict. This Resolution shall take effect immediately.

DONE, RATIFIED AND ADOPTED this 1st day of May, 2018.

**CITY OF HARTSVILLE,
SOUTH CAROLINA**

(SEAL)

Carl M. (Mel) Pennington IV, Mayor

Attest:

Sherron L. Skipper, City Clerk

EXHIBIT A

Description of Vehicles/Equipment

Combined Utility and Waterpark Items

Furniture
Cabanas
Food Trailer
Point of Sale System
Retail Kiosk
Ice Machine
Park Signage
Volcano Prop
Trash Can Barrels
Conduit
Cabling

General Fund and Public Safety Items

Safety Equipment
Police Cars
Tink Claw
Business Navigator Vehicles



**REQUEST FOR
COUNCIL AGENDA**
The City of Hartsville

Agenda Date:
5/1/2018

To: City Council
From: City Manager

Ordinance Number: Resolution Number: 05-18-02 - SPECIAL MEETING

ORDINANCE/RESOLUTION CAPTION:

Approval of exclusive beverage pouring rights between the City and Pepsi Cola of Florence, SC.

ATTACHMENTS:

Description

- ▣ Resolution 05-18-02
- ▣ Resolution 05-18-02 - Agreement

RESOLUTION 05-18-02

APPROVING AN EXCLUSIVE BEVERAGE POURING RIGHTS MASTER AGREEMENT BY AND BETWEEN THE CITY OF HARTSVILLE, SOUTH CAROLINA AND THE PEPSI COLA OF FLORENCE, LLC; AND OTHER MATTERS RELATED THERETO.

WHEREAS, the City of Hartsville (the “*City*”) is a municipal corporation of the State of South Carolina located in Darlington County, 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;

WHEREAS, the Pepsi-Cola of Florence, LLC (“*Pepsi*”) is a beverage distributor located in Florence, South Carolina

WHEREAS, the City desires for Pepsi to provide beverage services to the Neptune Island Water Park (the “*Park*”).

WHEREAS, the City and Pepsi have determined to execute and deliver an Exclusive Beverage Pouring Rights Agreement (the “*Agreement*”), which provides that Pepsi will provide exclusive beverage pouring rights services for City at the Park; a copy of the Agreement is attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and other members of City Council of the City of Hartsville, as the governing body of the City (the “*Council*”) as set forth below:

SECTION 1.

The Council has reviewed the drafts of the Agreement, a copy of which is attached hereto as Exhibit A.

The Agreement shall be executed and delivered on behalf of the City by the City Manager. The consummation of the transactions and undertakings described in the 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.

SECTION 2.

This Resolution is effective immediately upon the adoption hereof.

DONE AND RESOLVED IN COUNCIL ASSEMBLED, this 1st day of May, 2018.

CITY OF HARTSVILLE, SOUTH CAROLINA

(SEAL)

Carl M. (Mel) Pennington IV, Mayor

Attest:

Sherron L. Skipper, City Clerk

Exhibit A

Copy of Agreement

EXCLUSIVE BEVERAGE POURING RIGHTS MASTER AGREEMENT

THIS MASTER AGREEMENT (“Agreement”) is made by and between Pepsi-Cola of Florence, LLC (“Pepsi”) whose business and physical address is 2499 Florence Harlee Boulevard, Florence, South Carolina 29506 and the City of Hartsville, a political subdivision in Darlington County, South Carolina (“City”) whose business address is 100 East Carolina Avenue, Hartsville, South Carolina 29550. This Agreement is made effective as of the date specified at the end of this Agreement on which all Parties have executed (“Effective Date”). Hereinafter, collectively, Pepsi and City shall be referred to as the “Parties” and each individually as a “Party”.

WHEREAS, Pepsi agrees to provide exclusive non-alcoholic beverage pouring rights services for City at the Neptune Island Water Park (the “Premises”); and

WHEREAS, City desires Pepsi to perform such services.

NOW, THEREFORE, for and in consideration of the payment of One Dollar (\$1.00) by Pepsi to the City and the exchange of mutual promises and covenants, the sufficiency of which consideration is acknowledged by the Parties, the Parties hereby agree as follows:

1. Term and Products

1.1 Pepsi agrees to serve as the sole, exclusive, and official beverage sponsor, supplier of Product (as defined below) and equipment, distributor, and promoter for a period of five (5) years beginning May 1, 2018 and ending April 30, 2023 (the “Term”) with the option to extend for one additional five (5) year renewal term provided there is mutual written agreement between the Parties. A Notice of Intent to Renew shall be submitted by the City to Pepsi no later than 180 days before the Term expires.

1.2 “Product” shall be defined as:

- bottle and can beverages commonly known as “soft drinks;”
- bottled still and enhanced water;
- bottle and can sports drink/isotonic;
- bottle and can 100% fruit juices;
- bottle and can fruit and/or fruit containing drinks;
- bottle and can ready-to-drink iced tea products;
- bottle and can ready-to-drink coffee products;
- bottle and can energy beverages;
- fountain beverage products; and
- any other products distributed by Pepsi.

A non-exclusive initial list of Product is attached hereto as Exhibit A. Product does not include any alcoholic beverages and the provisions of this Agreement do not govern or control any sales of alcoholic beverages by the City.

1.3 The term of this Agreement shall not be affected by a change in food service vendors by City, or a change in the terms of any contract City has with any food service vendor.

2. **Staffing and Interaction**

- 2.1 Pepsi shall provide the support team listed below to perform the services as specified in this Agreement.

The individuals listed below are the key personnel under this Agreement.

<u>Name</u>	<u>Function</u>
Les Ward	General Manager
Jimmy Sandifer	Marketing Equipment/Service Manager
Shannon Swartz	Business Development
David Cicirello	Senior Key Account Manager
Earl Weatherford	Location Sales Manager

- 2.2 Pepsi may reassign or substitute personnel and shall immediately notify the City of such reassignment or substitution in writing.
- 2.3 Clear and timely communication between the Parties is essential to the successful execution of this Agreement. _____ shall serve as Pepsi's point of contact at the City for purposes of providing instructions to Pepsi concerning all venues and events. City may substitute another representative(s) to serve as Pepsi's point of contact(s) upon reasonable prior written notice to Pepsi.

3. **Contacts/Notices**

- 3.1 Notices, payments, statements, reports and other communications under this Agreement shall be in writing and shall be deemed to have been duly given when hand delivered, upon delivery when sent by express mail, courier, overnight mail or three (3) days following the date mailed when sent by registered or certified United States mail, postage prepaid, return receipt requested, addressed as follows:

3.1.1 City's Authorized Point of Contact:

3.1.2 Pepsi's Authorized Point of Contact:

David Cicirello
Pepsi-Cola of Florence
2499 Florence Harlee Blvd.
Florence, South Carolina 29506

4. **Compensation and Method of Payment**

- 4.1 For services rendered by Pepsi as specified in the presentation dated February 1, 2018, Pepsi shall provide the financial incentives indicated in the presentation, a copy of which is attached, and incorporated into this Agreement as Exhibit B, Pages 7-11, 19.
- 4.2 In the event City does not comply with the Pepsi payment terms, Pepsi reserves the right to withhold funding payments owing hereunder until such time as City

complies with such payment terms, and to withhold funding payments due hereunder as an offset against amounts not paid by City for Pepsi products and services delivered.

4.3 Pepsi reserves the right to withhold funding payments owing hereunder in the event that City does not otherwise meet all performance criteria set forth in the Agreement.

4.4 Pepsi shall submit to City invoices for fees on a monthly basis and payment shall be due to Pepsi within 30 days of the date of the invoice. Payment will be made by City via a mutually agreed-upon method.

4.5 Pepsi's Federal Tax Identification Number is 71-0984485, and it is duly organized in the State of South Carolina.

5. Assignment

5.1 Neither Party may assign, license, or subcontract any of its rights or obligations under this Agreement, in whole or in part, except upon the prior written consent of the other Party, except the Parties may assign this Agreement to an affiliated company, a parent company, sister company or wholly owned subsidiary without prior approval and without being released from any of their responsibilities hereunder.

6. Early Termination; Remedies

6.1 For Cause. Either Party may terminate this Agreement for Cause (defined as a material breach of this Agreement, gross neglect of duty, or willful misconduct) after affording the other Party reasonable notice and opportunity to cure. Failure of Pepsi to maintain insurance coverage as described in Section 8 below shall be deemed a "for cause" ground for termination; however, this shall not be the sole "for cause" ground for termination.

6.2 Without Cause. Either Party may terminate this Agreement without Cause (defined as any reason that was not "for cause" as described in Section 6.1 above) at any time upon one hundred eighty (180) calendar days prior written notice to the other Party.

6.3 Remedies.

6.3.1 Upon termination with or without Cause, each Party shall be entitled to assert all claims and seek all remedies available to that Party under the terms of this Agreement and applicable law.

6.3.2 Upon termination without Cause by the City, Pepsi shall receive payment for all outstanding invoices, work in progress, and expenses incurred up to the date of termination.

7. Indemnification

7.1 During the pendency of this Agreement, Pepsi agrees to, and shall indemnify, defend and hold harmless the City and its agents and employees from and against any and all claims and demands whatever for loss or damage, including property damage, personal injury and wrongful death, arising out of or in connection with the entry, demolition,

construction and development of the Premises or in the performance of this Agreement by Pepsi, its agents, employees, contractors, subcontractors, or invitees or as a result of any incident, environmental disturbance or contamination, fire or other casualty or a nuisance on or in respect of the Premises, or any failure by Pepsi to keep the Premises, in a safe condition.

8. Insurance Requirements

- 8.1 Pepsi shall procure and maintain, at Pepsi's own expense, the following insurance coverage for the term of this Agreement. The minimum policy limits set forth below may be satisfied through a combination of primary and excess coverage:

8.1.1 Commercial General Liability with \$1,000,000/\$2,000,000 for each occurrence for bodily injury, contractual liability, and property damage liability and \$5,000,000 for products liability.

8.1.2 Comprehensive Automobile Liability: \$1,000,000 combined single limit coverage for bodily injury and property damage. This policy shall cover any vehicle being used in the management, operation, or delivery for the operation.

8.1.3 Property Insurance on property owned by Pepsi. Policy should provide "all risk" coverage in the amount of Pepsi's property, including inventory, as is located on City's Premises.

8.1.4 Umbrella Policy: \$5,000,000 limit of liability per occurrence.

8.1.5 Workers' Compensation Insurance coverage shall be maintained during the contract period, by Pepsi, as prescribed by South Carolina statutory law.

8.1.6 Unemployment Compensation Insurance shall be maintained by Pepsi as prescribed by South Carolina statutory law.

8.1.7 Employee Dishonesty Insurance: limit of \$1,000,000 each occurrence.

8.1.8 Cyber Insurance: To be determined at the request of the City based on future electronic sales and usage by Pepsi.

- 8.2 Prior to the beginning of each Term, Pepsi shall furnish certificates to City showing that such insurance is in effect. The protection afforded under the policies will not be canceled or reduced until at least thirty (30) days after written notice is received by City from the insurance company or agent. The insurance company provider must have an A.M. Best rating of A- or better.

- 8.3 Any insurance coverage that Pepsi provides for City and its respective directors, officers, and employees shall only cover liability assumed by Pepsi in this Agreement; such insurance coverage shall not cover liability in connection with, or arising out of, the wrongful or negligent acts or omissions of City and its respective directors, officers, and employees.

- 8.4 Pepsi, at Pepsi's sole expense, shall maintain and keep in effect throughout the Term and any renewal thereof, insurance against loss or damage to Pepsi's personal property, Pepsi's interest in any building improvements and betterments, and any potential income and extra expense costs that may arise from damage to the Premises.

- 8.5 This Agreement shall not be construed to be a lease of any of the facilities or other property of the City. City retains the risk of loss due to casualty for all of its facilities in which Pepsi's services are to be performed. City shall obtain and maintain insurance for its Premises, equipment, offices and utilities against risks covered by standard forms of fire, theft and extended coverage in such amounts under such policies as appropriate.

9. Federal, State and Local Laws

- 9.1 Pepsi warrants that in the performance of this Agreement, it shall exercise usual and customary professional care in its efforts to comply with all applicable federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder. In the event of a conflict between the laws and lawful regulations of any entities having jurisdiction over the project, Pepsi shall notify City of the nature and impact of such conflict. City agrees to cooperate and work with Pepsi in an effort to resolve any conflict.

10. Licenses

- 10.1 If a Federal or state license(s) of any kind is required of Pepsi, its employees or agents, Pepsi warrants that such license has been obtained and is valid and in good standing. Pepsi agrees to keep all required licenses in effect at all times during the terms of this Agreement.

11. Independent Contractor

- 11.1 In performance of its duties and obligations under this Agreement, Pepsi is an independent contractor. Nothing in this Agreement shall be understood or construed to create or imply any relationship between the parties in the nature of any joint venture, employer/employee, principal/agent or partnership.

12. Ownership of Work Products

- 12.1 Pepsi and City agree that if either Party wishes to use the other Party's trademarks or name(s) in co-branding and/or publications, the Party wishing to use the other's mark will not do so without prior written consent from the other Party.
- 12.2 Upon completion of all work under this Agreement, ownership and title to all custom letters, reports, documents, plans, specifications, and estimates and other products produced as part of this Agreement (herein "deliverables") will automatically be vested in City. No further agreement will be necessary to transfer ownership to City. Pepsi shall furnish City all necessary copies of data needed to complete the review and approval process. No copies of the data made for Pepsi's records shall be furnished to others without City's prior written authorization. Such deliverables are works made for hire and all rights in copyright therein are to be retained by City. All information derived from these deliverables is confidential and may not be disclosed to any other party without the express prior written consent of City. No information obtained during audit work performed under this Agreement may be used by Pepsi for any purpose (internal or external), nor may the information be discussed with others without the prior written consent of City.

13. Modification of Agreement

- 13.1 This Agreement may not be amended or modified except by a written document signed by duly authorized representatives of both Parties.

13.2 Pepsi shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by City.

13.3 No oral understanding or agreements not incorporated herein shall be binding on the Parties.

14. Complete Agreement

14.1 This Agreement, which incorporates by reference all cited exhibits herein, embodies the entire understanding between the Parties relating to the subject matter hereof and supersedes all prior understandings and agreements, whether written or oral. In the event of any dispute, the following documents in the order presented shall be referenced:

14.1.1 Pouring Rights Presentation for Neptune Island, dated February 1, 2018,

14.1.2 All subsequent written communications between the two Parties.

14.1.3 The RFP and ancillary documents should not be allowed to contradict a term of this Agreement, but only for purposes of interpretation of terms of this Agreement, which are ambiguous or unclear. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect.

15. Confidentiality

15.1 Pepsi shall maintain in strict confidence and shall not photocopy, duplicate, or disclose to any third party any information to which Pepsi may have access and which concerns: (a) City's financial affairs, budgets, business practices, or plans and strategies of any kind; (b) City's employees, faculty, students, and alumni; and (c) any other matters or subjects which City identifies as confidential or proprietary (all of the foregoing are referred to herein as "City Confidential Information"). Pepsi agrees to take all necessary precautions to prevent the disclosure of City Confidential Information to third parties by limiting access to employees of Pepsi with a need to know for the purpose of providing services under this Agreement, by instructing employees on confidentiality precautions, and by requiring employees to sign confidentiality agreements as necessary. City shall maintain in strict confidence and shall not photocopy, duplicate, or disclose to any third party any information to which City may have access and which concerns: (a) Pepsi's financial affairs, budgets, business practices, or plans and strategies of any kind; (b) Pepsi's employees, directors and officers; and (c) any other matters or subjects which Pepsi identifies as confidential or proprietary (all of the foregoing are referred to herein as "Pepsi Confidential Information"). City agrees to take all necessary precautions to prevent the disclosure of Pepsi Confidential Information to third parties by limiting access to employees of City with a need to know for the purpose of providing services under this Agreement, by instructing employees on confidentiality precautions, and by requiring employees to sign confidentiality agreements as necessary. Any information placed in the public domain by Pepsi is exempt.

15.2 Pepsi shall also comply with all Federal and State laws and regulations regarding the privacy, confidentiality and security of information regarding City, its employees, faculty, students, and alumni. Pepsi recognizes that City is subject to the SC Freedom of

Information Act, codified at S.C. Code Ann. 30-4-10 et seq. ("FOIA"). Nothing herein shall prohibit the dissemination of Pepsi Confidential Information, which is subject to disclosure under FOIA. If such disclosure is to be made, City will give Pepsi 3 days advance notice of the disclosure allowing Pepsi to take any action necessary to protect its confidential information.

15.3 Pepsi may use City confidential information only for the fulfillment of the requirements of this Agreement and for no other purpose. Upon expiration of the Term of this Agreement, or sooner upon demand by City, Pepsi shall return all City Confidential Information to City or make other disposition thereof as directed by City.

15.4 The foregoing requirements of confidentiality shall not apply to information which: (a) at the time of disclosure was already known to Pepsi as evidenced by written records predating such disclosure; (b) at the time of disclosure is in the public domain and generally available to the public other than by an act or omission of Pepsi, its employees, or agents, (c) is expressly released by City in writing from the confidentiality requirements of this Section, or (d) is subject to disclosure under FOIA subject to the provisions in Paragraph 15.2 above.

16. Severability

16.1 If any provision or a portion of any provision is held to be unenforceable or invalid by a court of competent jurisdiction, the validity and enforceability of the enforceable portion of any such provision and/or the remaining provisions shall not be affected thereby.

17. Governing Law

17.1 This Agreement shall be deemed to be governed by and construed in accordance with the laws of South Carolina, without giving effect to the conflict of law principles thereof. The Parties hereby submit to the jurisdiction of the state and federal courts located in the County of Darlington, State of South Carolina for the litigation of any disputes relating to this Agreement.

18. Attorneys' Fees

18.1 In the event that either Party deems it necessary to take legal action to enforce any provision of this Agreement, the non-prevailing Party agrees to pay all expenses of such action, including reasonable attorneys' fees and costs at all stages of litigation.

19. Force Majeure

19.1 Neither Party shall be responsible for any delay or failure to perform its obligations under this Agreement where such delay or failure is due to fire, flood, explosion, war, embargo, governmental action, Act of Public Authority, Act of God or to any other cause beyond its control, except labor disruption.

In the event Force Majeure occurs, the affected Party shall give prompt notice to the other Party and shall take all reasonable steps to eliminate the cause.

Should the Force Majeure event last longer than 30 calendar days, City may terminate this Agreement immediately by written notice to Pepsi without further liability, expense, or cost of any kind.

20. Financial Specifications – Prices and Price Increases

- 20.1 City reserves the right to approve or reject requested price increases. However, with adequate evidence, City shall not unreasonably deny price increases. This paragraph shall not in any way restrict or limit the pricing of Products sold to the food service vendor or to the public, but only Products sold directly to City.

21. Taxes; City Tax Exemptions; Sales Taxes

- 21.1 Pepsi shall pay, when due, all taxes or assessments applicable to Pepsi. Pepsi shall comply with the provisions of the applicable statutes and the regulations of the applicable taxation authority. Pepsi shall be required to accept liability for payment of all business license taxes, property taxes, payroll taxes or deductions required by local and federal law, including, but not limited to, pension, social security, or annuities.
- 21.2 City is exempt from state and federal taxes, except in specific cases. A tax exemption certificate shall be furnished to Pepsi upon request. Any other taxes levied upon this Agreement, the transaction, or the equipment or services delivered by Pepsi pursuant hereto shall be the responsibility of Pepsi. Pepsi shall be responsible for collecting and remitting to the taxing authorities the appropriate amount of sales taxes it collects in accordance with applicable state and local laws and regulations. Pepsi agrees to assign and transfer to City all of its rights to sales and use tax which may be refunded as a result of a claim for refund for materials purchased in connection with this Agreement. Pepsi further agrees that it shall not file a claim for refund for any sales or use tax that is the subject of this assignment.
- 21.3 Method of Payment. Pepsi may, at its sole discretion, accept cash, credit cards, and debit cards for any purchases. Pepsi is solely responsible for any problems that it encounters (from accepting such payment methods).

22. Auditing and Accounting

- 22.1 Pepsi shall operate on its own credit with no advance payments from City required.
- 22.2 Pepsi shall retain, and provide City with access to, all records related to City for a minimum of five (5) previous years plus the current Agreement year. City reserves the right to audit any aspect of this Agreement, as performed by Pepsi. Pepsi shall keep full, timely, and accurate records related to City in accordance with generally accepted accounting practices.
- 22.3 The operating statements and accounting procedures and practices of Pepsi relevant to this Agreement shall be subject to examination by City.
- 22.4 Pepsi shall inform City upon demand of the schedule of independent audits of Pepsi's records and operations. City shall receive a report of any findings that materially affect City.
- 22.5 City is on a monthly business cycle with a fiscal year of July 1 through June 30. Pepsi shall supply financial data on a year beginning January 1 and ending December 31 of each year.
- 22.6 Pepsi shall provide a breakdown of sales by location annually upon submission of commission reports and sales reports.
- 22.7 Performance Evaluation Process: One or more City representatives shall regularly evaluate Pepsi's operational and financial performance. Pepsi acknowledges that poor

beverage and/or service quality and unsanitary facility/ equipment conditions can do irreparable harm to City and its beverage services. Pepsi shall consistently meet, if not exceed, all legal and food service industry best practices within the framework of this Agreement. Failure of any Performance Evaluation Process shall constitute “for cause” grounds to terminate, after Pepsi has received notice of deficiency and a reasonable time to cure the deficiency.

23. Management and Personnel

23.1 Pepsi shall maintain an adequate staff to ensure a quality pouring rights service operation.

23.2 Pepsi is responsible for the on-campus behavior of all its employees, agents, and, if applicable, sub-Pepsi’s employees. Pepsi’s employees shall abide by all City rules and regulations. Infraction of those rules and regulations by any Pepsi employee may result in City requiring that Pepsi no longer assign such Pepsi employee to deliver to City, provided that Pepsi shall advise City if such reassignment is not possible because it would be in violation of applicable employment laws.

24. Equipment - Inventory, Procurement, and Repairs

24.1 Prior to the execution of this Agreement, City and Pepsi shall review and, as appropriate, update an inventory of expendable and non-expendable supplies and equipment. A proposed list is attached hereto as Exhibit C. All equipment provided will be customized with City and/or Neptune Island logos.

24.2 Pepsi shall, at its expense, provide and maintain all vehicles used in support of this Agreement program in compliance with all manufacturer-recommended use and maintenance procedures.

24.3 Pepsi agrees to provide a lockable trailer for storage at the Premises at no charge on an as needed basis.

25. Beverages and Other Supplies

25.1 Pepsi shall be responsible for all costs (as part of doing business) related to the purchase of beverages in conjunction with the operation of the pouring rights program.

25.2 Upon expiration or termination of this Agreement, inventories of beverages and expendable supplies belonging to Pepsi shall remain those of Pepsi, it being further agreed that if Pepsi maintains an inventory of supplies bearing the logo of City or a City entity, City shall either purchase directly or cause Pepsi’s successor to purchase Pepsi’s usable inventory of such logoed supplies. The purchase price for such is and/or supplies shall be at Pepsi’s cost.

26. Security

26.1 City shall provide general security to the locations utilized by Pepsi. Pepsi agrees not to take any action to compromise that security.

26.2 Pepsi shall be responsible for immediately reporting to City police any break-ins or unauthorized entries into the beverage service areas used to perform this Agreement and all property losses associated therewith.

26.3 City shall not be responsible for the criminal acts of third parties.

27. Marketing and Public Communications

- 27.1 Pepsi shall partner and cooperate with City to regularly develop and implement advertising and promotional efforts to increase the visibility and image of City's beverage availability to visitors. City shall cooperate with Pepsi in promoting and merchandising services and products to attract more customers and to more fully utilize the beverage services provided pursuant to this Agreement.
- 27.2 All advertising and promotional efforts shall be coordinated through, and reviewed by, City prior to publication and distribution.
- 27.3 The Parties agree not to use the other Party's trademark(s) or mark(s) without prior written approval of the other Party.

28. Recycling

- 28.1 Pepsi shall supply recycle containers for outdoor areas on the Premises if bottled beverages are present. Pepsi will also work with City and any food service provider in selecting the best type of cup for events.
- 28.2 Pepsi will make all reasonable efforts to comply with both present and future recycling programs as adopted by the City.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date indicated below their signatures.

PEPSI COLA OF FLORENCE, LLC

By: _____
(Signature)

David Cicirello

Title: Senior Key Account Manager

Address: 2499 Florence Harlee Blvd., Florence, SC 29506

Business Phone _____

Employer Federal ID #: 71-0984485

Date: _____

CITY OF HARTSVILLE

By: _____
(Signature)

Name: _____

Title: _____

Address: 100 E. Carolina Avenue, Hartsville, SC 29550

Date: _____



**REQUEST FOR
COUNCIL AGENDA**
The City of Hartsville

Agenda Date:
5/1/2018

To: City Council
From: City Manager

Ordinance Number: Resolution Number: 05-18-03 - SPECIAL MEETING

ORDINANCE/RESOLUTION CAPTION:

Approval of property maintenance agreement with Darlington County Habitat for Humanity

BACKGROUND SUMMARY:

As a participant in the Neighborhood Initiative Program funded by SC Housing and in partnership with DC Habitat for Humanity, the City is responsible for the maintenance of lots acquired and cleared through the program for 3 years. The program provides funds, budget allowing, for the maintenance of the properties. The City will use these funds to offset labor costs to mow and maintain the lots during the 3 years. An agreement must be executed with DCHFH, per NIP regulations, as Habitat is the owner of the properties.

IMPACT IF DENIED:

If the City does not perform the work in house, we can bid it out, which would be more costly and an administrative burden for oversight of an external contract for 3 yrs.

IMPACT IF APPROVED:

The agreement, once executed, the City can proceed with finalizing loan modifications to close out this phase of the program.

FINANCIAL IMPACT:

Minimal. As stated, funds have been allocated to offset expenses. City staff must log hours spent working on the project. Any unused funds must be returned at the end of the 3 year period.

ATTACHMENTS:

Description

- ▣ Resolution 05-18-03
- ▣ Exhibit A

RESOLUTION 05-18-03

APPROVING A PROPERTY MAINTENANCE AGREEMENT BY AND BETWEEN THE CITY OF HARTSVILLE, SOUTH CAROLINA AND DARLINGTON COUNTY HABITAT FOR HUMANITY; AND OTHER MATTERS RELATED THERETO.

WHEREAS, the City of Hartsville (the “**City**”) is a municipal corporation of the State of South Carolina located in Darlington County, 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;

WHEREAS, Darlington County Habitat for Humanity (“**DCHfH**”) has acquired eleven (11) properties as part of a project funded by SC Housing to eliminate blight in the South Hartsville neighborhood, in partnership with the City, and anticipates these properties to be used for future development purposes (the “**Properties**”);

WHEREAS, the City finds that the maintenance and upkeep of the Properties will benefit the public; and

WHEREAS, the City and DCHfH have negotiated a Property Maintenance Contract Agreement (the “**Agreement**”) regarding the City’s planned maintenance of the Properties; a copy of the Agreement is attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and other members of City Council of the City of Hartsville, as the governing body of the City (the “**Council**”) as set forth below:

SECTION 1.

The Council has reviewed the drafts of the Agreement, a copy of which is attached hereto as Exhibit A.

The Agreement shall be executed and delivered on behalf of the City by the City Manager. The consummation of the transactions and undertakings described in the 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. In connection with the execution and delivery of the Agreement, the City Manager is additionally authorized to prepare, review, negotiate, execute, deliver, and agree to such additional agreements regarding the development and maintenance of the Properties (to include any necessary amendments or extensions), certifications, documents, closing proofs, and undertakings as she shall deem necessary or advisable.

SECTION 2.

This Resolution is effective immediately upon the adoption hereof.

DONE AND RESOLVED IN COUNCIL ASSEMBLED, this 1st day of May, 2018.

Carl M. (Mel) Pennington IV, Mayor

ATTEST: _____
Sherron L. Skipper, City Clerk

CONTRACT AGREEMENT

Maintenance of NIP Properties

This CONTRACT AGREEMENT is entered into by and between the City of Hartsville and Darlington County Habitat for Humanity as of May____, 2018.

WITNESSETH

WHEREAS, Darlington County Habitat for Humanity has possession/ownership of the eleven residential properties within the city limits of Hartsville, South Carolina located at: 419 Logan Avenue, 307 Short Howard Street, 511 Howard Street, 911 Hampton Street, 503 Rice Street, 321 Bell Avenue, 1016 Myrtle Street, 915 Hampton Street, 1306 Robinson Street, 430 Bell Avenue, and 814 Hampton Street.

WHEREAS, the City of Hartsville will be responsible for the maintenance of the eleven residential properties within the city limits of Hartsville, South Carolina located at: 419 Logan Avenue, 307 Short Howard Street, 511 Howard Street, 911 Hampton Street, 503 Rice Street, 321 Bell Avenue, 1016 Myrtle Street, 915 Hampton Street, 1306 Robinson Street, 430 Bell Avenue, and 814 Hampton Street and will not bill Darlington County Habitat for Humanity for these services for the lien periods (approximately 3 years).

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City of Hartsville (hereafter known as City) and Darlington County Habitat for Humanity (hereafter known as Habitat) do hereby agree as follows:

1. **GENERAL:** The City of Hartsville agrees to undertake the lawn care and maintenance of the properties located at 419 Logan Avenue, 307 Short Howard Street, 511 Howard Street, 911 Hampton Street, 503 Rice Street, 321 Bell Avenue, 1016 Myrtle Street, 915 Hampton Street, 1306 Robinson Street, 430 Bell Avenue, and 814 Hampton Street and agrees to the following:
 - a. The City will not bill Habitat for this service during the lien period (approximately 3 years). The expenses the City will incur for this service will be funded by the NIP maintenance funds received by the City from the SC Housing.
 - b. To keep grass on all eleven properties mowed.
 - c. To keep all trees and shrubs trimmed.
 - d. To keep properties free of trash, debris and nuisances at all times.
 - e. NIP maintenance funds, if available, are disbursed as part of the final draw request for each property. No additional maintenance funds can be disbursed by SCHC/SC Housing after the final draw has been processed.
2. **EXECUTION:** City agrees to maintain the landscaping and maintenance of all properties covered by this agreement, in accordance with the following terms and conditions:
 - a. The City will comply with all applicable laws and City of Hartsville ordinances.

- b. The City will comply with all Neighborhood Initiative Program (NIP) policies and procedures.
- c. The property shall be kept mowed, trimmed and cleared/free of all debris, brush and trash at all times.
- d. The City will maintain the properties for the period of the lien (approximately 3 years).

3. MISCELLANEOUS:

- a. The City of Hartsville's Public Service Department is the department responsible for the landscaping and property maintenance of all property owned or utilized by the City. They have the manpower and equipment to provide these services.
- b. The City will not bill Habitat for the maintenance services, as the City has requested and received NIP funds in the amount of up to \$2,000 per property, where the budget allowed, to cover all associated costs and expenses of the maintenance of these properties that may occur during the period of the lien. Copies of the Maintenance Fees per property have been provided to SC Housing (refer to Exhibit A).
- c. No NIP maintenance funds are budgeted for 1306 Robinson Street. The City understands this and commits to maintaining the property to the same standard as the other fully funded properties.
- d. The City shall maintain responsibility for logging all costs generated in completing the scope of work here detailed.
- e. The City understands that in the event of a maintenance fund balance at the release of the final lien, staff should contact the appropriate SC Housing contact to appropriately repay any unspent funds.
- f. The City and Habitat understand that the sites are subject to periodic inspection by SC Housing for compliance with SC Housing regulations.
- g. The grass will be mowed once per month from March to November.
- h. Foliage will be trimmed as needed.
- i. The City will deal with non-routine maintenance issues as they arise by utilizing the City's other agencies as needed to ensure the properties are kept clean and free of nuisances for the surrounding property owners and community at large.

IN WITNESS WHEREOF, the undersigned parties have set their hands and seals as of the date set out below.

City of Hartsville

Darlington County Habitat for Humanity

By: _____

By: _____

City Manager, Natalie Zeigler

Chair, Audrey Tripp

Accepted this _____ day of _____, 2018.



REQUEST FOR
COUNCIL AGENDA
The City of Hartsville

Agenda Date:
5/1/2018

To: City Council
From: City Manager

Ordinance Number: Resolution Number: 05-18-04 - SPECIAL MEETING

ORDINANCE/RESOLUTION CAPTION:

Approval for the relocation of Garrison's place play elements and installation of new playground equipment at Bylery Park.

ATTACHMENTS:

Description

- ▣ Resolution 05-18-04

RESOLUTION 05-18-04

TO APPROVE PROPOSAL FOR BYERLY PARK PLAYGROUND EQUIPMENT.

WHEREAS, the City advertised and received sealed proposals for the relocation of the Garrison's Place play elements and installation of new playground equipment at Byerly Park; and,

WHEREAS, sealed proposals were opened and read aloud on April 24, 2018 at 2:00 pm and the recommended successful bidder is Creative Playscapes, LLC of Mooresville, North Carolina in the amount of One Hundred Eighty Thousand Dollars (\$180,000.00); and,

WHEREAS, Creative Playscapes is considered to have appropriate technical experience, adequate equipment and personnel, adequate liability and worker's compensation insurance coverage, and suitable financial resources to perform the work properly and expeditiously.

NOW, THEREFORE BE IT RESOLVED, by the Mayor and the Council of the City of Hartsville that a Resolution of Award for the above service is hereby awarded to Creative Playscapes, LLC of Mooresville, North Carolina, as subject to the approval and concurrence of the granting agency.

NOW, THEREFORE BE IT FURTHER RESOLVED, that the City Manager is authorized to execute all necessary documents.

NOW, THEREFORE BE IT HEREBY FINALLY RESOLVED, in meeting duly advertised and assembled the 1st day of May, 2018.

Carl M. (Mel) Pennington IV, Mayor

ATTEST: _____
Sherron L. Skipper, City Clerk



REQUEST FOR
COUNCIL AGENDA
The City of Hartsville

Agenda Date:
5/1/2018

To: City Council
From: City Manager

Ordinance Number: Resolution Number: 05-18-05 - SPECIAL MEETING

ORDINANCE/RESOLUTION CAPTION:

City desires for Tengo to provide technology services to the Neptune Island Water Park.

ATTACHMENTS:

Description

- ▣ Resolution 05-18-05
- ▣ Exhibit A - Agreement

RESOLUTION 05-18-05

APPROVING AND RATIFYING A WIRELESS NETWORK AGREEMENT BY AND BETWEEN THE CITY OF HARTSVILLE, SOUTH CAROLINA AND THE TENGOINTERNET, INC.; AND OTHER MATTERS RELATED THERETO.

WHEREAS, the City of Hartsville (the “**City**”) is a municipal corporation of the State of South Carolina located in Darlington County, 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.

WHEREAS, the TingoInternet, Inc. (“**Tengo**”) is a Texas Corporation that specializes in the development of Wi-Fi networks and technology services for unique public facilities.

WHEREAS, the City desires for Tengo to provide technology services to the Neptune Island Water Park (the “**Park**”).

WHEREAS, in compliance with the City’s procurement policy, the City and Tengo have determined to execute and deliver an Wireless Network Agreement (the “**Agreement**”), which provides that Tengo will install, develop and maintain internet and technology services; a copy of the Agreement is attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and other members of City Council of the City of Hartsville, as the governing body of the City (the “**Council**”) as set forth below:

SECTION 1.

The Council has reviewed the drafts of the Agreement, a copy of which is attached hereto as Exhibit A.

The Agreement shall be executed and delivered on behalf of the City by the City Manager. The consummation of the transactions and undertakings described in the 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. Any actions previously undertaken by the City Manager, Council or City staff in connection with the execution and delivery of the Agreement prior to the enactment of this Resolution, including the actual execution of the Agreement, are ratified and confirmed.

SECTION 2.

This Resolution is effective immediately upon the adoption hereof.

DONE AND RESOLVED IN COUNCIL ASSEMBLED, this 1st day of May, 2018.

CITY OF HARTSVILLE, SOUTH CAROLINA

(SEAL)

Carl M. (Mel) Pennington IV, Mayor

Attest:

Sherron L. Skipper, City Clerk

Exhibit A

Copy of Agreement

WIRELESS NETWORK AGREEMENT

This Wireless Network Agreement (this "**Agreement**") is entered into as of the later signature date below (the "**Effective Date**"), between TengolInternet, Inc., a Texas corporation ("**TengolInternet**") with a primary place of business as set forth in the signature block hereto, and **City of Hartsville, South Carolina** ("**Customer**").

TengolInternet desires to provide, and Customer desires to obtain, the Services for use at Customer's Properties, on the following terms:

1. DEFINITIONS

"**Acceptable Use Policy**" means the TengolInternet Acceptable Use Policy, currently found online at www.tengolinternet.com and as updated from time to time, and any other acceptable use policy or similar usage terms provided from time to time by any supplier of Services, including the ISP Service provider.

"**Equipment**" means the equipment and materials listed on the Service Schedule, together with any other equipment and materials included in the installation based on the final network plan approved by the parties.

"**Guests**" means campers, residents and visitors at the Property who use the Internet access services provided by TengolInternet under this Agreement.

"**Initial Service Period**" means the period of time set forth on the Service Schedule, commencing on the earlier of (i) the date that TengolInternet has advised Customer that Internet access services are available to all Properties or (ii) the two-month anniversary of the Effective Date.

"**ISP Service**" means the provision of Internet service (transport circuit such as a T-1) from a source outside the Property to an access point within the Property on the interior of a structure controlled by Customer. TengolInternet does not provide ISP Service, and is not responsible for any issues related to the ISP Service, except that TengolInternet will procure and manage ISP Service on Customer's behalf if and only if expressly agreed by the Parties in the Service Schedule.

"**Property**" and "**Properties**" means (respectively) each property and all properties, owned or managed by Customer, that are listed on the Service Schedule, and at which TengolInternet is to provide Services hereunder.

"**Property Owner**" means, for any Property that is not owned by Customer, the actual owner of the Property.

"**Service Period**" means the Initial Service Period and each renewal term of this Agreement, collectively.

"**Service Schedule**" means the Initial Service Schedule attached to this Agreement, and each other document designated as a "Service Schedule" pursuant to this Agreement and executed by the parties.

"**Services**" means the installation (if applicable), commissioning, ISP Service (if applicable), Internet access, network management, support and/or other services listed herein and on the Service Schedule, together with the related services, provided by TengolInternet under this Agreement.

2. DELIVERY OF EQUIPMENT AND SERVICES

2.1 TengolInternet agrees to sell and deliver the Equipment to Customer; however, notwithstanding the foregoing, embedded software is licensed (not sold) to Customer hereunder. Upon delivery of the Equipment to the Property, Customer shall own the Equipment subject to a first priority lien (only on the Equipment) in favor of TengolInternet to secure full payment for the Equipment. Customer will reasonably cooperate with TengolInternet to the extent TengolInternet chooses to make any UCC filings or take other actions to perfect its security interest. If Customer has elected self-installation, Customer shall be fully responsible for installing the Equipment within the timeframe stated in the Service Schedule and according to the network plan. Failure of Customer to properly install the Equipment will void the Equipment warranty and prevent TengolInternet from delivering the Services.

2.2 TengolInternet shall use commercially reasonable efforts to provide the Services to Customer for use at the Properties during the Service Period in accordance with the terms and conditions of this Agreement.

2.3 TengolInternet reserves the right to suspend delivery of Services to Customer or any Guest if deemed reasonably necessary by TengolInternet to prevent harm to TengolInternet, its business, its other customers, or any other party, or if TengolInternet reasonably believes that Customer or such Guest is in violation of any applicable laws, or the Acceptable Use Policy.

2.4 Software (including embedded firmware, applications and all other software) and other intellectual property (such as any tools or interfaces) included with or constituting part of the Equipment or Services is licensed to Customer, not sold under this Agreement. TengolInternet hereby grants to Customer a nonexclusive, royalty-free, terminable, non-sublicensable, non-assignable, limited license to use such software and other intellectual property solely at the location at which the Equipment or Services were supplied and strictly in connection with Customer's use of the Equipment and Services as provided herein, and subject to all restrictions set forth herein. Such license terminates immediately upon termination of this Agreement. To the extent that any software is owned or licensed from third parties, such software is also subject to any applicable licensing restrictions or terms (including any shrink-wrap or click-wrap licenses and EULAs) of such third parties. Subject to the foregoing, as between the parties, TengolInternet reserves all ownership rights in such intellectual property.

3. CERTAIN OBLIGATIONS OF CUSTOMER

3.1 Customer shall provide to TengolInternet the specific assistance described on the Service Schedule, together with such additional information, assistance and cooperation, including access to the Properties, as TengolInternet may reasonably request from time to time to install (if applicable) and service the Equipment and to deliver the Services. Customer shall ensure the availability of a single, authorized contact, with basic technical skills, at each Property to coordinate support issues and respond to requests for assistance from TengolInternet.

3.2 Customer shall take reasonable measures to protect the Equipment from loss or damage and otherwise to maintain the proper operation of the Equipment and related materials and supplies, including ensuring adequate power supplies, HVAC and humidity control, all as specified by TengolInternet. Without the consent of TengolInternet, Customer shall not move the Equipment from its original location, shall not adjust or modify the Equipment and shall not attempt to repair the Equipment. Without limiting the general nature of the foregoing, Customer is solely responsible for all loss or damage to Equipment caused by theft, vandalism, improper storage/security or environmental conditions, Customer's negligence or carelessness, and/or any other Non-Covered Equipment Issues (defined below).

3.3 Customer shall comply with (a) all laws and regulations applicable to its use of the Equipment and Services and (b) the Acceptable Use Policy.

3.4 If Customer has elected to obtain the ISP Service directly from a third party, Customer shall use best efforts to ensure the continuous availability of the ISP Service meeting the specifications set forth in the Service Schedule, at a site within each Property approved by TengolInternet. Customer shall be responsible for complying with all terms, regulations and policies applicable to such ISP Service, including without limitation ensuring that the ISP Service is permitted to be used for resale/reoffering to Guests as hereby contemplated. If Customer has elected to obtain the ISP Service through TengolInternet, Customer shall execute any end-user agreement that may be required by the ISP Service provider and Customer shall at all times comply with the acceptable use policy and general terms of use provided directly or indirectly to Customer.

3.5 Reserved

3.6 Customer may refer to TengolInternet and its wireless Internet access services as the provider of public internet access services, on Customer's website, at each Property and also in marketing materials that refer to different amenities available at the Property and that are otherwise appropriate for a mention of Wi-Fi services, subject to reasonable restrictions on form and content as may be imposed by TengolInternet and as are set forth in this Agreement. Without limiting the generality of the foregoing, Customer may post such signs and brochures as TengolInternet provides from time to time, in visible and reasonable locations throughout the Properties. Customer gains no rights in the TengolInternet name, logo, brand and/or related trademarks, trade names, service marks, service names, distinctive brand elements, branding or "look and feel" ("**Marks**"), all of which rights are reserved by and to TengolInternet. All uses of the Marks shall inure to the sole benefit of TengolInternet. Customer shall not: register or attempt to register any trademarks, URLs, servicemarks or other intellectual property that incorporates any element of the Marks, nor use the Marks in any other way except as hereby contemplated/as provided by TengolInternet for display under this Agreement. Customer will comply with any TengolInternet branding guidelines supplied to it or posted online. TengolInternet reserves the right to remove (or demand immediate removal) of any of its Marks from any medium/location if used in violation of this Agreement, the branding guidelines, or if deemed reasonably necessary by TengolInternet to prevent harm to TengolInternet's business or any third party.

3.7 Customer understands that the operation of radio frequency (RF) transmitting equipment not provided or authorized by TengolInternet (such as wireless access points, wireless cameras, amateur radio equipment, and mobile data equipment) can interfere with the wireless network and Services provided by TengolInternet resulting in service interruptions or outages. Accordingly, Customer shall not provide, and shall not allow any third party (including Guests) to provide, wireless equipment or services (including Wi-Fi) at any Property without the prior written consent of TengolInternet.

4. FEES AND PAYMENT

4.1 Customer shall pay to TengolInternet the fees for the Equipment and Services as provided in the Service Schedule. Although TengolInternet may elect to issue invoices from time to time, Customer's payment obligations are not contingent upon receipt of any invoice. If any amount payable by Customer is past due by more than 15 days, TengolInternet may suspend delivery of Equipment or Services without prior notice and without waiving any right to terminate this Agreement or other rights available to TengolInternet.

4.2 Prices are quoted excluding sales and other applicable taxes unless expressly noted otherwise. Customer shall pay to TengolInternet from time to time on demand all sales, use and other similar taxes applicable to the products and services provided under this Agreement.

4.3 Payments by Customer are subject to annual appropriation and are not intended to create a pecuniary liability against the Customer. The full faith, credit and taxing power are not pledged for the payment of any fees or charges due hereunder.

5. CONFIDENTIALITY

5.1 For purposes of this Agreement, "**Proprietary Information**" of each party means all confidential or proprietary information of such party disclosed or made available to the other party in connection with this Agreement, including any third party's confidential or proprietary information, that is identified to the receiving party as confidential or proprietary or based upon its nature or the circumstances under which it was disclosed should reasonably be considered to be confidential or proprietary. Notwithstanding the foregoing, nothing disclosed or made available to either party shall be considered to be Proprietary Information if (i) it is or subsequently becomes generally and readily available to the public without breach of any confidentiality obligation owed to the disclosing party; (ii) the receiving party had such information in its possession without obligations of confidentiality prior to disclosure by the disclosing party; (iii) the receiving party obtains such information without obligations of confidentiality from a third party who the receiving party reasonably believes has the right to transfer or disclose it to the receiving party on such basis; or (iv) it is developed by the receiving party independently of and without use of any of the disclosing party's Proprietary Information.

5.2 Each party shall maintain in confidence and shall not disclose or use, during and/or for five years after the term of this Agreement, any Proprietary Information of the other party, except to the extent required to exercise or enforce its rights or to perform its duties under this Agreement. Each party shall therefore only disclose Proprietary Information of the other party to its employees, contractors, and agents who have a need to know for such purposes and who are bound by similar obligations of confidentiality and nonuse. Each party shall use reasonable care to prevent any unauthorized use or disclosure of Proprietary Information of the other party. This Agreement itself is the Proprietary Information of TengolInternet. The foregoing restrictions on confidentiality and nonuse shall not prohibit the receiving party from disclosing any information that the receiving party is required to disclose by applicable laws or regulations or by government or judicial order, provided such receiving party uses reasonable efforts to give the disclosing party prompt prior notice of the same (unless prohibited by the applicable law or order) and the opportunity to limit such disclosure, and reasonably cooperates in such disclosure-limitation efforts (at disclosing party's cost). Any disclosure made under the preceding sentence (a) shall be as limited as reasonably practicable under the circumstances and (b) shall not nullify the disclosed information's status as Proprietary Information nor the receiving party's obligation to protect it from disclosure under all other circumstances.

5.3 Promptly after termination of this Agreement (or upon disclosing party's earlier request) the receiving party shall, where technically feasible and commercially reasonable, return to the disclosing party (or shall destroy, at disclosing party's option) all materials containing any Proprietary Information of the disclosing party; provided, however, that any material not returned or destroyed (because it was not technically feasible and commercially reasonable to do so) shall be maintained as confidential under this Agreement indefinitely.

5.4 The parties acknowledge that Customer is subject to the South Carolina Freedom of Information Act, which is codified at Title 30, Chapter 4 of the Code of Laws of South Carolina 1976, as amended ("FOIA"). To the extent any Proprietary Information is not otherwise exempted from FOIA, it shall be subject to disclosure by the Customer. Any documents intended by either party to be Proprietary Information shall be clearly marked as confidential. In the event Customer receives a request for Proprietary Information, it will notify TengolInternet within 2 business days of such request. Nothing herein obligates the customer to withhold non-exempt documents or prevents TengolInternet from seeking a protective order or other appropriate remedy, at its own cost and expense, to limit disclosure of any Proprietary Information or other documents that may be withheld under FOIA.

6. REPRESENTATIONS, WARRANTIES AND DISCLAIMERS

6.1 Each party represents and warrants to the other party that such party has the power and authority to execute and perform its obligations under this Agreement, that the execution and performance of this Agreement by such party has been duly authorized by all necessary action, and that such party's execution and performance of its obligations under this Agreement does not and will not breach any agreement by which such party is bound.

6.2 Customer represents and warrants to TengolInternet on a continuing basis that, with respect to each Property, (i) Customer is the manager and operator of the business conducted at such Property; (ii) Customer is either the owner of the real property and improvements at the Property or the sole tenant of such real property and improvements under a valid lease with the Property Owner, which lease is not in default and is currently in full force and effect; (iii) if Customer is not the Property Owner, such Property Owner is as designated on the Service Schedule and has authorized Customer to enter into this Agreement with respect to such Property; and (iv) the transactions contemplated by this Agreement are not limited or restricted by any lease agreement, restrictive covenant or other agreement, arrangement, regulation, rule, order, ordinance or decree applicable to Customer, the Property Owner, or such Property.

6.3 Equipment Warranty

6.3.1 TengolInternet warrants to Customer that for the duration of the Initial Service Period (but in no event longer than three years after the commencement of the Initial Service Period), TengolInternet shall repair or replace, at its election and expense, any item of Equipment that is materially defective during normal operation, provided that (a) the failure is not a result of Non-Covered Equipment Issues or related to EOL Equipment (each as defined below), (b) Customer is not in default of this Agreement (including late in payment obligations) at the time, and (c) Customer notifies TengolInternet of the warranty claim prior to the expiration of the warranty period. These warranty obligations shall not survive termination of this Agreement. Note: unless Customer has paid for the separate on-site labor warranty under the Service Schedule, Customer must, in order to exercise this warranty, (i) request and receive return materials shipping labels from TengolInternet and (ii) ship the Equipment to

the repair location as designated by TengolInternet, at Customer's shipping risk. Warranty-claim Equipment which is not timely returned to TengolInternet will be billable to Customer thirty (30) days after Customer's receipt of related replacement Equipment. On-site labor and time charges are excluded from the warranty set forth herein (unless Customer purchased the separate on-site labor warranty). This paragraph states Customer's sole remedy for defects in TengolInternet products, Equipment or Services.

6.3.2 In specific limitation of the preceding paragraph, TengolInternet shall have no responsibility with respect to any defect or problem attributable, in whole or in part, to any of the following "**Non-Covered Equipment Issues**": (i) any modification, attempted repair or relocation of any Equipment not performed or authorized in writing by TengolInternet, (ii) any combination, operation, or use of any Equipment with any hardware, software or other materials not approved in writing or installed by TengolInternet, (iii) any signal degradation or loss caused by the introduction of any physical impedance, obstacle, or hindrance (including tree growth) of line of sight between any installed antenna and the desired coverage area, (iv) any additional electrical, satellite, radio, television or any other type of broadcasting or receiving equipment that might interfere with WLAN service after installation of the Equipment, or (v) any other cause beyond the reasonable control of TengolInternet, including any problem resulting from fire, acts of God, accident, neglect, misuse or improper installation (not performed by TengolInternet), from failure of power, air conditioning or humidity control, or from any breach of this Agreement by Customer.

6.3.3 In addition, Customer understands and acknowledges that technology evolves and changes and that Equipment has a finite useful lifespan. After the passage of time, the Equipment may not be compatible with new technologies, may no longer be supported by the manufacturer (including as to software) or may otherwise be superannuated (referred to herein as "**End of Life**" or "**EOL**" Equipment). Once Equipment is EOL, it is Customer's obligation to update the Equipment at Customer's expense if Customer wishes to remain functionally competitive, technologically up-to-date, and to be able to obtain software updates and replacement parts. In addition, TengolInternet's obligation to support failed Equipment under Section 6.3.1 is limited to using commercially reasonable efforts to keep EOL Equipment functioning only if that proves reasonably practicable and does not incur unplanned expense to TengolInternet. In no case is TengolInternet required to update, upgrade or replace EOL Equipment at its expense.

6.4 EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT AND THE INITIAL SERVICE SCHEDULE, THE EQUIPMENT, THE SERVICES AND ANY OTHER PRODUCTS OR SERVICES PROVIDED BY OR ON BEHALF OF TENGOLINTERNET ARE PROVIDED "AS IS," WITHOUT ANY WARRANTY OF ANY KIND, AND ALL WARRANTIES WITH RESPECT TO THE SAME, EXPRESS OR IMPLIED, INCLUDING ANY SERVICE LEVEL COMMITMENTS, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTIES REGARDING TITLE OR AGAINST INFRINGEMENT, OR ANY WARRANTIES THAT MAY ARISE FROM USAGE OF TRADE OR COURSE OF DEALING, ARE HEREBY EXPRESSLY AND COMPLETELY DISCLAIMED BY TENGOLINTERNET. FURTHER, TENGOLINTERNET DOES NOT WARRANT, GUARANTEE OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF THE EQUIPMENT OR THE SERVICES, INCLUDING ANY WARRANTY THAT ANY SOFTWARE OR SERVICE SHALL RUN/BE PROVIDED UNINTERRUPTED OR SHALL BE ERROR OR VIRUS FREE OR COMPLETELY SECURE. CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT WI-FI INTERNET IS NOT, AND CANNOT REASONABLY BE MADE, COMPLETELY SECURE. WITHOUT LIMITATION OF THE FOREGOING, THE COMPANY ACKNOWLEDGES THAT THERE IS NO GUARANTEE OF RF OR WI-FI COVERAGE TO EVERY POINT WITHIN ANY OF THE PROPERTIES.

7. LIMITATIONS ON DAMAGES AND LIABILITIES

7.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL TENGOLINTERNET OR ANY EMPLOYEE, DIRECTOR, AGENT, OR ANY AFFILIATE, OF TENGOLINTERNET (COLLECTIVELY, THE "**TENGOLINTERNET PARTIES**") BE LIABLE TO CUSTOMER, ANY PROPERTY OWNER, ANY GUEST OR ANY OTHER PERSON OR ENTITY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR ANY PRODUCTS, EQUIPMENT, OR SERVICES PROVIDED OR TO BE PROVIDED UNDER THIS AGREEMENT, INCLUDING DAMAGES RESULTING FROM INTERRUPTION OF SERVICE, LOSS OF DATA, LOSS OF REVENUE OR PROFIT, OR LOSS OF TIME OR BUSINESS, WHETHER LIABILITY IS ASSERTED IN CONTRACT OR IN TORT (INCLUDING STRICT LIABILITY OR NEGLIGENCE) OR OTHERWISE AND REGARDLESS OF WHETHER TENGOLINTERNET OR ANY TENGOLINTERNET PARTIES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, THE AGGREGATE LIABILITY OF TENGOLINTERNET AND ALL TENGOLINTERNET PARTIES FOR DAMAGES FOR ANY CAUSE WHATSOEVER ARISING OUT OF THIS AGREEMENT OR ANY PRODUCTS, EQUIPMENT, OR SERVICES PROVIDED OR TO BE PROVIDED UNDER THIS AGREEMENT AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT (INCLUDING STRICT LIABILITY OR NEGLIGENCE) OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNTS ACTUALLY RECEIVED BY TENGOLINTERNET UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

8. TERM AND TERMINATION

8.1 This Agreement shall be effective for the term beginning on the Effective Date and continuing until the expiration of the Initial Service Period. Thereafter, except as otherwise specified in the Service Schedule, this Agreement shall automatically renew for successive 12-month terms unless either party gives written notice of non-renewal to the other party at least sixty (60) days prior to the expiration of the then-current term.

8.2 Upon a breach by either party of any material obligation under this Agreement which is not cured within thirty (30) days after the other party provides the defaulting party with written notice of such breach, this Agreement may be terminated immediately, effective upon notice by the aggrieved party to the defaulting party.

8.3 This Agreement may be terminated immediately upon receipt of written notice from the non-bankrupt party in the event that the other

party (a) declares bankruptcy, (b) has an involuntary bankruptcy filed against it which remains in effect for at least thirty days, (c) makes an assignment for the benefit of creditors, or (d) takes any other action indicating insolvency under applicable law. Any termination under this section may be referred to as a "**Bankruptcy Event**".

8.4 Termination or expiration of this Agreement shall not affect any rights or obligations (i) with respect to any periods prior to the time of expiration or termination, including any payment obligations arising prior to expiration or termination or (ii) under Articles 5, 6.4, and 7 through 9, all of which shall survive termination or expiration.

8.5 Upon termination of this Agreement, each party shall return to the other party any property owned by such other party or its suppliers (including the ISP Service provider). Additionally, if TengolInternet procured the ISP Service, Customer shall pay to TengolInternet any early termination fees imposed by the ISP Service provider and any applicable fees for Customer's failure to return the ISP Service provider's equipment within 30 days after termination.

8.6 If this Agreement is terminated prior to its scheduled termination date (whether of the Initial Service Period or any subsequent renewal period) either (a) by TengolInternet because of Customer's uncured breach or Bankruptcy Event or (b) by Customer except to the extent that Customer had the express right to terminate early because of TengolInternet's uncured breach or Bankruptcy Event, then in such case Customer shall be liable to pay TengolInternet, as liquidated damages and not as a penalty (acknowledging that damages are difficult to prospectively estimate), an amount equal to the number of months remaining in the Customer's then-current budget year **multiplied** by 100% of the total monthly amount for such budget period that is owed by Customer to TengolInternet under this Agreement. This paragraph is subject to Customer's right to terminate during the first ninety (90) days after installation if Customer is reasonably dissatisfied with the Equipment or Services as set forth in the Initial Service Schedule.

9. MISCELLANEOUS

9.1 TengolInternet is an independent contractor of Customer and nothing in this Agreement shall be construed to create a partnership, agency or other fiduciary relationship between the parties. Neither party shall have the authority to make any representation or create any obligation on behalf of the other party unless specifically requested and authorized to do so by the other party in writing.

9.2 The provisions of this Agreement may be modified, altered, amended or repealed, in whole or in part, only with the written consent of TengolInternet and Customer. No waiver by a party of any rights may be enforced against the party unless the waiving party has provided the waiver in writing. The waiver by a party of any breach or default by the other party hereunder shall not constitute the waiver of any subsequent breach or default or the relinquishment of any other rights a party may have hereunder.

9.3 For purposes of litigating any dispute that arises under this grant or the Agreement the parties hereby submit to and consent to the jurisdiction of the state of South Carolina, agree that such litigation shall be conducted in the circuit court of Darlington County, South Carolina.

9.4 This Agreement constitutes the entire agreement between TengolInternet and Customer concerning the subject matter of this Agreement and supersedes all prior or contemporaneous negotiations, proposals, agreements or understandings between the parties with respect to such subject matter, whether written, oral or otherwise. Preprinted forms, such as purchase orders, acknowledgements or similar documents submitted by Customer shall NOT be deemed to vary the terms and conditions of this Agreement, and to the extent such forms purport to vary these terms or add or delete other terms, such Customer forms are void and of no effect. Each Service Schedule and any exhibits, schedules, addenda or attachments to this Agreement shall constitute an integral part of this Agreement.

9.5 Neither party may transfer or assign any of its rights or obligations under this Agreement, in whole or in part, to any other person or entity without the prior written consent of the other party; provided, however, that (i) the foregoing shall not prohibit TengolInternet from utilizing subcontractors in connection with the performance of its obligations hereunder and (ii) such consent shall not be required in connection with a transfer or assignment of all of a party's rights and obligations under this Agreement to an Affiliate (as defined below) of such party or in connection with the sale of all or substantially all of the assets or equity of such party (or all or substantially all of such assets as are associated with the business of which this Agreement is a part), provided that (x) the assignee agrees in writing to assume such obligations, (y) if assignor is Customer, such assignee demonstrates to TengolInternet's reasonable satisfaction (prior to the assignment) that it is financially equally as sound as (or more sound than) Customer and (z) the assignor shall give notice to the other party promptly. Any attempted assignment in violation of the foregoing shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and permitted assigns. For purposes of this Agreement, the term "**Affiliate**" shall mean any person or entity that directly or indirectly controls, is controlled by, or is under common control with, the person or entity in question. "**Control**" is deemed the ability to name a majority of the board of directors (or other managing body) of an entity, ownership of at least 50% of the equity of an entity, or the actual ability to control the decision-making of an entity.

9.6 All notices and other formal communications hereunder must be in writing and, unless otherwise expressly permitted herein, must be either delivered in person, by reputable overnight courier, or sent by mail, postage prepaid, registered or certified, return receipt requested and addressed to the party entitled to receive such notice or formal communication at the address for such party set forth on the signature page of this Agreement or at such other address as such party shall provide in a written notice sent to the other party. Except as may be specifically provided herein, such notice shall be deemed effective as of the date of delivery or, if mailed in the manner set forth above, three (3) days after the date of mailing.

9.7 The headings used in this Agreement are for convenience only and shall have no legal effect. Whenever the context requires, the gender of all words used herein shall include the masculine, the feminine and the neuter. This Agreement has been negotiated by the parties and shall be interpreted in accordance with its terms and without any construction in favor of or against either party as the drafting party. As used in this Agreement, the terms "including" or "includes" are not to be construed as terms of limitation, but rather shall be construed to mean "includ[ing](es)

without limitation" and, unless otherwise specified, the term "days" means calendar days.

9.8 Except for Customer's obligation to make timely payments, no party shall be liable for delay in performance or for non-performance caused by circumstances beyond the control of the party affected, including acts of war, acts of God, fire, flood, government action, accident, technical failure, failure of the Internet, labor trouble, acts or omissions of communications carriers, and shortages of materials, equipment or transportation; provided, however, that the party so affected notifies the other party in writing as soon as practicable of the existence of such condition. TengolInternet shall not be responsible for delays or failures caused by Customer, any Property Owner or any Guest.

9.9 If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be deemed severable, and this Agreement shall be construed and enforced as if such provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, a court/arbitrator is directed to add as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, enforceable, and consistent with the parties' intent expressed herein.

9.10 This Agreement may be executed in two or more counterparts (PDF is acceptable), and each counterpart shall be deemed an original, but all counterparts shall together constitute a single instrument.

9.11 There are no intended third party beneficiaries to this Agreement. None of the provisions of this Agreement shall be for the benefit of or enforceable by any person or entity other than Customer, TengolInternet, and their respective successors and permitted assigns.

9.12 Customer agrees to give TengolInternet 30 days' notice of any renovation, remodeling, work on fixtures, PBX or wiring or other work that may affect the TengolInternet Services, and agrees to use good faith efforts to minimize the disruption of availability of the Services during such work. If areas need to be de-installed or re-installed, the fee payable to TengolInternet shall be determined in accordance with TengolInternet's standard pricing for such services.

9.13 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of South Carolina.

[signatures on next page]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the later signature date below.

TengolInternet, Inc.	City of Hartsville, South Carolina
BY:	BY: Title:
DATE SIGNED:	DATE SIGNED:
Eric B. Stumberg, President & CEO	

Contact Information:

TengolInternet, Inc.	City of Hartsville, South Carolina
ATTN: Eric Stumberg, CEO 3300 North IH 35 Frontage Road Suite #600 Austin, Texas 78705 Voice: (512) 469-7660 Fax: (512) 233-1783	1109 14th St. Hartsville, SC 29550

INITIAL SERVICE SCHEDULE

1. Properties

Property Name: **Neptune Island**
Property Address: **1109 14th St.**
Hartsville, SC 29550

2. Specific Customer Requirements

Installation Requirements

If TengolInternet has agreed to install the Equipment, Customer shall ensure that each installation site meets the requirements set forth in the site preparation document provided by TengolInternet. If Customer has agreed to install the Equipment, Customer shall ensure that each installation is conducted in accordance with the self-installation document provided by TengolInternet.

Where TengolInternet installs wireless internet access, Customer acknowledges, understands and agrees that TengolInternet will make commercially reasonable efforts to install the wireless access points in a configuration to provide service in every location agreed upon by the parties; however, due to the nature of wireless signal propagation, reflection, transmission, diffraction, and degradation, wireless access may not be available in every square foot of the Property. "Dead spots" of wireless activity may occur in certain limited areas.

ISP Service

Unless TengolInternet has agreed to procure the ISP Service, Customer must timely procure ISP Service for each Property that meets the recommendations set forth on the initial proposal. In addition, Customer acknowledges having received and read TengolInternet's standard Customer Supplied Circuits Disclosure, which sets forth the required specifications of any transport circuit to be provided by Customer. Where TengolInternet must interface with the ISP Service Provider, Customer agrees to execute TengolInternet's form of Letter of Agency upon TengolInternet's request, to allow TengolInternet to act on Customer's behalf for the ISP Service.

Additional Customer Requirements

Customer shall:

- A. Have the installation site prepared and available for TengolInternet to begin installation (unless Customer is doing the installation itself).
- B. Complete all prerequisite work to cable pathways including concrete boring and cuttings, trenching, installation of conduits, variances and rights of way required for the installation of the Equipment, where applicable.
- C. Assume responsibility for all Equipment at delivery and shall provide a secure and adequately sized storage area for said Equipment.
- D. Provide TengolInternet and its sub-contractors access to their premises as required. This access may require escorted or unescorted access to all areas of the Property during normal working hours (8:00 AM to 5:00 PM) or after hours.
- E. At no cost to TengolInternet: (i) make available to TengolInternet space in its wiring closet, any telecommunications access points, including all available fiber or twisted pair copper wiring, plena, rooftop, and other areas reasonably necessary to provision the services, for installation, operation and maintenance of the Equipment necessary for TengolInternet to effect its installation obligations under the Agreement, (ii) provide a means for ingress and egress to this space at TengolInternet's convenience; (iii) allow TengolInternet to have reasonable access to all areas of the Property as required under the Agreement (and TengolInternet agrees to try to minimize disturbance to Guests and to comply with all reasonable and legal behavior & deportment requirements of Customer that have been provided in advance to TengolInternet), which access may, at the Property's sole option, be with an escort of the Property's own choosing; and (iv) provide TengolInternet with sufficient electrical power and access to power outlets as necessary for TengolInternet to power its Equipment in order to perform its obligations pursuant to the Agreement (including without limitation, access to unswitched 110V power at each main distribution frame (MDF), intermediate distribution frame (IDF), mechanical or electrical closet, or wireless access point location where the installation of powered TengolInternet network equipment is required).
- F. Ensure the telephone/equipment room(s) must be clean, dry, and well ventilated. The recommended temperature range must be maintained between 59 degrees and 86 degrees Fahrenheit (with the maximum range between 32 degrees to 122 degrees Fahrenheit). Equipment room humidity must be maintained between 0 to 95% non-condensing. Equipment must be located at least 4 meters (13.1 feet) from equipment such as copiers, electric motors, and other equipment that can produce electromagnetic or radio interference. A standard equipment rack, and/or backboard large enough to accommodate system modules and distribution blocks will be required. Normally a 4' x 8' x 3/4' plywood backboard capable of supporting 50 lbs. will meet these requirements.

3. Equipment

See the Equipment Addendum provided in original proposal

4. Services

- A) Equipment installation
- B) Remote commissioning and orientation
- C) ISP service (if TengolInternet is contracted by Customer to manage the ISP contract and/or contract is directly with the ISP service provider)
- D) The following Ongoing Services:
 - 24 x 7 cloud-based network management dashboard
 - Network status visibility, user and usage reporting
 - Front desk office tools for easy network management by staff
 - Ticketing system with visibility to support calls from customer's location
 - 24 x 7 proactive TengolInternet monitoring and remote maintenance
 - 24 x 7 automated network monitoring
 - Custom outage notifications
 - Guest usage & bandwidth capacity monitoring and consultation
 - Customizable guest, front desk experience
 - Network authentication via secure login screen
 - Fully customizable, dynamic bandwidth shaping for upload, download, total data, and individual plans
 - Free or paid guest access available via open access, registration, shared username or coupons
 - Ability to allow unrestricted speeds or controlled access for specific users as-needed
 - Custom branded landing page, welcome page, SSID, and call-center experience **(added cost)**
 - Guest liability mitigation
 - TengolInternet maintains access logs and requires Terms of Service page
 - Stored data (subject to operational and other limitations) available for copyright Infringement responses
 - Ability to block MAC addresses upon request
 - Network support
 - Network support case management
 - Automated network monitoring and outage notifications
 - RF interference management
 - Equipment replacement warranty (initial 3-year term of service; onsite labor warranty not included)
 - ISP Services
 - ISP Sourcing
 - ISP service level management and troubleshooting
 - Guest care
 - Toll-free 24 x 7 guest care line **(Unlimited)**
 - Support escalations to help solve complex end-user challenges **(Network Assurance)**

5. Initial Service Period

36 months

6. Fees

Equipment purchase and installation, including taxes: **\$73,154.14.**

[Customer to pay 50% on signing of this agreement and 50% on completion of installation.]

ISP Installation: **\$3700.00**

Total Ongoing Monthly Services: **\$626.80** per month, due on the first day of each month during the Service Period.

Monthly service fee includes \$475 of Network Support and \$151.80 of ISP provisioning and management. Actual ISP fees may vary.

ISP installation fees are estimated at \$3700, but may vary. If actual ISP installation fees are greater than the estimated \$3700, the Customer may choose an alternate ISP provider.

Additional ISP installation and service fees requested by the ISP will be disclosed to the Customer prior to TengolInternet's signing of the ISP agreement, and the Customer will have the option to decline the service and adjust this Agreement accordingly. If Customer accepts the requested ISP fees and terms, Customer acknowledges that the ISP Installation and Service Fees above will change to reflect the actual fees agreed to by Customer and contracted by TengolInternet. Monthly ISP Fee includes an estimate of taxes and fees, but may be adjusted following receipt by TengolInternet of the first ISP invoice.

Customer shall be solely responsible for the payment of any and all federal, state, municipal or other sales tax or use tax now or hereafter imposed or required to be imposed on any customer as part of the price of an item of merchandise sold or Service rendered in connection with this Agreement (other than taxes due on income earned by TengolInternet).

Prices are firm during the Initial Service Period. TengolInternet may increase the monthly fee for Ongoing Services effective as of the start of any renewal term by providing Customer with notice (which may be provided on or with an invoice or via email for this purpose) at least forty five (45) days prior to the start of such renewal term. Notwithstanding the foregoing, however, if TengolInternet increases prices by greater than five percent (5%) versus existing prices for any renewal term, Customer has the right to terminate this Agreement by providing written notice to TengolInternet within fifteen (15) days of the date of such notice, even if the amount of notice of termination would otherwise be shorter than the amount required by Section 8.1 of the Agreement. If Customer does not terminate during such fifteen day window, Customer is deemed to have accepted such new pricing. In addition, if the cost to TengolInternet of providing ISP service is increased by the ISP, TengolInternet has the right to pass on such increase to Customer as incurred,

If TengolInternet collects Guest access fees for Customer, TengolInternet shall retain 17% of all amounts paid by Guests during the month and attributable to a Property and TengolInternet shall remit the remainder (net of any credit card or bank fees, bad debts, chargebacks) to Customer within 15 business days after the end of the month (unless Customer is then overdue in its payment obligations to TengolInternet, in which case TengolInternet may retain and offset such amount against amounts owed to TengolInternet). For purposes of this Agreement, a payment is "attributable to a Property" if the payment to access the internet at the Property is made or authorized by a Guest while physically located at the Property and shall exclude, by way of example, any payment received by TengolInternet with respect to a roaming plan that may be in effect, even if a roaming customer receives access at the Property (and, for the sake of clarity, the parties acknowledge that TengolInternet may allow Guests to have roaming access under the Agreement at a Property without payment to the Property/Customer for such roaming access). Any refunds or discounts (including coupon redemptions) not taken into account in calculating such amounts for any particular month shall be carried forward and considered in succeeding months. Except as specifically provided herein, TengolInternet shall be entitled to receive and retain all amounts paid by or with respect to Guests with respect to the Services.

Unless alternative payment arrangements have been made with TengolInternet, recurring fees owed by Customer must be paid automatically by credit card or Automated Clearing House (ACH). Customer shall maintain a valid credit card or ACH authorization on file with TengolInternet. Customer is, and remains, solely responsible for all payment obligations to TengolInternet under this Agreement, regardless of expiration or refusal/failure of credit card/ACH.

7. Other Terms

Customer's Cancellation Right

If Customer is not reasonably satisfied with the Equipment or Services because they do not perform in accordance with their specifications and as reasonably expected during the first ninety (90) days of the Initial Service Period, then Customer may, at its option, terminate this Agreement without penalty by notifying TengolInternet in writing within such period and cooperating with TengolInternet to permit TengolInternet to remove all Equipment provided by TengolInternet. All such Equipment must be in like-new condition and ownership of all such Equipment shall immediately revert to TengolInternet. If Customer terminates this Agreement in such manner, then TengolInternet shall refund to Customer the purchase price paid for the Equipment, offset by Service fees amounts due from Customer to TengolInternet as of the termination date. Customer shall be responsible for all other amounts due as of the termination date, including fees for Services through the termination date and ISP Service charges (and any early termination penalties imposed by the ISP Service provider).



**REQUEST FOR
COUNCIL AGENDA**
The City of Hartsville

Agenda Date:
5/1/2018

To: City Council
From: City Manager

Ordinance Number: 4332 Resolution Number: - SPECIAL MEETING

ORDINANCE/RESOLUTION CAPTION:

Ordinance to lease property at 147 W Carolina to GSSM Foundation.

BACKGROUND SUMMARY:

GSSM Foundation is currently leasing the facility

ATTACHMENTS:

Description

- ▣ Ordinance 4332
- ▣ lease

ORDINANCE 4332

AUTHORIZING THE LEASE OF A PORTION OF THE PROPERTY AT 147 WEST CAROLINA AVENUE TO THE GOVERNOR'S SCHOOL OF SCIENCE AND MATH (GSSM) FOUNDATION.

WHEREAS, the City of Hartsville owns the building at 147 West Carolina Avenue; and,

WHEREAS, the City desires to lease a portion of the property for use as office space; and,

WHEREAS, the City desires to lease the property to GSSM Foundation

NOW, THEREFORE BE IT ORDAINED, by the Mayor and Council of the City of Hartsville that the City does hereby approve to lease a portion of the building at 147 West Carolina Avenue to GSSM Foundation for a term of month to month lease beginning July 1st, 2018.

NOW, THEREFORE BE IT FURTHER ORDAINED, that the City Manager is hereby authorized to execute the negotiated lease agreement document.

NOW, THEREFORE BE IT FINALLY ORDAINED IN MEETING DULY ADVERTISED AND ASSEMBLED on the ____th day of _____, 2018 and to become effective upon final reading.

Carl M. (Mel) Pennington IV, Mayor

ATTEST: _____
Sherron L. Skipper, CMC, City Clerk

First Reading: 05/01/2018
Public Hearing:
Final Reading:

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

LEASE AGREEMENT

THIS AGREEMENT, is entered by and between THE CITY OF HARTSVILLE,
(“LANDLORD”) and GOVERNORS SCHOOL FOR SCIENCE AND MATH FOUNDATION,
(“TENANT”).

WITNESSETH:

1. LEASEHOLD PREMISES.

The LANDLORD agrees to lease to TENANT the building at 147 West Carolina Avenue in Hartsville, South Carolina for purposes of maintaining office spaces, pertinent to TENANT’S purpose and activities.

2. TERM OF LEASE.

This Lease shall run month to month, from the 1st day of July, 2018 until the lease is terminated by either party.

3. LANDLORD’S RESERVATION OF RIGHT TO TERMINATE.

Notwithstanding any other provision herein, the Landlord specifically reserves the right to terminate this lease upon delivery to the TENANT at the said Leasehold Premises of a thirty (30) day written Notice of Termination, if for any reason City Council, in its sole discretion, determines that the Leasehold Premises should be vacated by the TENANT.

4. RENTAL.

TENANT agrees to pay the LANDLORD the sum of Twelve hundred dollars and no/100ths (\$1200.00) Dollars per month as rent for TENANTS use of the said leasehold premises. The rent is due on the first day of each month. In the event such payment is not made within ten (10) days after it is due, the TENANT shall pay the LANDLORD a late charge of \$100.00.

5. OTHER CONSIDERATION.

TENANT agrees to pay any ad valorem property taxes related to the leasehold premises during the term of this lease or any extensions hereof which the landlord may be held responsible for.

6. PARKING.

TENANT’S employees, agents, and contractors shall have the right to park on the gravel and asphalt areas behind the leasehold property which are not reserved for other businesses. The LANDLORD may specify parking to be used by the TENANT in the future.

7. NO WARRANTIES BY LANDLORD.

The leasehold premises are leased to TENANT "as is" with no representations or warranties made by LANDLORD regarding the condition, suitability, or habitability of the leasehold premises for any purpose TENANT intends to use the leasehold premises.

8. LANDLORD'S RIGHT TO ENTER LEASEHOLD PREMISES.

LANDLORD guarantees TENANT'S peaceful occupation and enjoyment of the leasehold premises during the term of this rental agreement, and any extensions thereof, provided; however, the LANDLORD shall have the right to enter the leasehold premises at anytime it may see fit to view the leasehold premises, and to see that no waste or damage is being committed. LANDLORD shall also have the right and privilege, to enter the leasehold premises and show it to prospective purchasers.

9. NOTICE OF ENTRY.

LANDLORD will call TENANT and give notice before entering the leasehold premises, but retains the right to enter the leasehold premises if it is determined by LANDLORD necessary to do so, and if TENANT is not available to give permission.

10. UTILITY BILLS (PHONE, POWER, SEWER, WATER, CABLE TV/INTERNET).

All utility bills of any kind and nature are the sole responsibility of TENANT. LANDLORD guarantees that all utilities (meters) are for the leased property only.

11. MAINTENANCE OF LEASEHOLD PREMISES.

LANDLORD agrees to be responsible for maintenance of the interior and exterior of the leasehold premises, including the maintenance of any LANDLORD'S equipment (appliances, fixtures, heating and air conditioning) used during the term of the lease, and agrees to keep the leasehold premises and equipment in a good, operating, and desirable condition, subject only to ordinary wear and tear, at all times throughout the term of this lease or any extensions thereof.

12. REPAIRS.

TENANT agrees to be fully responsible for making repairs for any damages done beyond ordinary wear and tear to the leasehold premises by TENANT, members of TENANTS organization, its guest, patrons, or invitees; and TENANT agrees, at its own expense, to make all repairs of such damage during the term of this lease, and any succeeding terms.

13. OWNERSHIP OF PERSONAL PROPERTY MAINTAINED BY TENANT.

TENANT stipulates, warrants, and covenants that all personal property (furnishings, equipment, office supplies) placed or maintained within the leasehold premises, is owned by the TENANT, in its own right.

14. CASUALTY LOSS TO TENANT'S PROPERTY

LANDLORD shall maintain casualty insurance coverage on the Leasehold structure; however, LANDLORD shall not be responsible for any loss of TENANT'S said personal property located in the leasehold premises. However, LANDLORD shall not be

responsible for providing any casualty or liability insurance insuring the property and liabilities of the TENANT. TENANT is responsible for determining its own insurance needs and, if appropriate, shall obtain and maintain such casualty insurance on its personal property placed and maintained within the leasehold premises as it deems appropriate.

15. HOLD HARMLESS.

LANDLORD shall not be responsible to TENANT, its agents, employees, and guests for any personal injuries or property damage caused to TENANT, its agents, employees, and guests arising from TENANT'S occupancy of the leasehold premises. TENANT agrees to and shall hold LANDLORD harmless from any such claims from any of TENANT'S agents, employees, guests, or others who may claim damages on account of TENANT'S use and occupation of the leasehold premises.

16. LIABILITY INSURANCE REQUIRED

The TENANT shall provide the CITY with evidence of currently paid general or liability insurance coverage for at least \$1,000,000.00, covering the TENANT, its officers, employees, and agents, with the amount of insurance required to insure TENANT and provide CITY's Purchasing Agent Office with a certificate of such insurance from an insurer authorized to do business in the State of South Carolina.

17. LEASE NON-ASSIGNABLE.

This lease is not assignable, and TENANT **shall have the right** to sublet the leasehold premises without written consent of the LANDLORD. TENANT is also allowed to allow use of the leasehold premises by clients of the TENANT without the consent of the LANDLORD.

18. TENANT NOT CITY'S EMPLOYEE OR AGENT.

The TENANT and the CITY agree that at all pertinent times, and for the duration of this Agreement, the TENANT, as well as its officers, employees, and agents, shall be considered independent entities and parties, separate and distinct from the CITY; and neither the TENANT, as well as its officers, employees, and agents, or the CITY, as well as its officers, employees, and agents, shall be considered to be in an employer-employee relationship with each other and neither shall be considered to be in any form of agency relationship with each other.

19. RECITATIONS.

This lease agreement is entered into in good faith and by parties as to the above, and represents the entire agreement between the parties; this agreement is binding upon the parties, their assigns and successors; this agreement is entered for good and valuable consideration, the receipt of which is acknowledged; and this agreement is entered by parties of their own free will and accord

20. DATE OF EXECUTION.

This Lease Agreement is entered by the parties in duplicate originals hereto on this ____ day of _____, 2018.

TENANT:
Governors School for Science and Math Foundation
(GSSM)
Hartsville, SC 29550

LANDLORD:
City of Hartsville
PO Drawer 2497
Hartsville, SC 29551

Steve Matthews, Chairman of the Board
GSSM Foundation

Natalie M. Zeigler, City Manager

Witnesses as to GSSM:

Witnesses as to City of Hartsville:

ATTEST: _____
Sherron L. Skipper, City Clerk
{SEAL}



**REQUEST FOR
COUNCIL AGENDA**
The City of Hartsville

Agenda Date:
5/1/2018

To: City Council
From: City Manager

Ordinance Number: 4333 Resolution Number: - SPECIAL MEETING

ORDINANCE/RESOLUTION CAPTION:

Ordinance for a first amendment to a Verizon cell tower lease

BACKGROUND SUMMARY:

Original lease date 7/15/2016

ATTACHMENTS:

Description

- ▣ Ordinance 4333
- ▣ Lease Agreement

ORDINANCE 4333

TO AMEND THE LEASE TO CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS FOR THEIR INSTALLATION OF CELLULAR EQUIPMENT ON THE POOLE ST WATER TOWER.

WHEREAS, CELLCO PARTNERSHIP d/b/a Verizon Wireless has made a proposal for a First Amendment to the original lease agreement dated July 15th, 2016; and,

WHEREAS, the proposal conforms to the guidelines listed in article VI (D) of the city zoning Ordinance 1183 which regulates the placement of towers for communications use within the city limits; and,

WHEREAS, the amendment would allow for additional equipment, modifications at Licensee expense, and an increase in the rental fee which fees will be deposited in the Utility Fund.

NOW, THEREFORE BE IT ORDAINED, by the Mayor and Council of the City of Hartsville that CELLCO PARTNERSHIP d/b/a Verizon Wireless is hereby granted First Amendment to lease.

NOW, THEREFORE BE IT FURTHER ORDAINED, that the City Manager is hereby authorized to execute the negotiated lease agreement document.

NOW, THEREFORE BE IT FINALLY ORDAINED IN MEETING DULY ADVERTISED AND ASSEMBLED on the ____ day of _____, 2018 and to become effective upon final reading.

Carl M. (Mel) Pennington IV, Mayor

ATTEST: _____
Sherron L. Skipper, CMC, City Clerk

First Reading: May 01, 2018
Public Hearing:
Final Reading:

FIRST AMENDMENT TO WATER TOWER LEASE AGREEMENT

THIS FIRST AMENDMENT TO WATER TOWER LEASE AGREEMENT (“**Amendment**”), dated as of the latter of the signature dates below (the “**Effective Date**”), is by and between CITY OF HARTSVILLE, a municipal corporation, with its principal offices located at 100 East Carolina Avenue, Hartsville, South Carolina hereinafter designated “**Lessor**”, and CELLCO PARTNERSHIP d/b/a Verizon Wireless with its principal offices located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404) hereinafter designated “**Lessee**”.

WHEREAS, Lessor and Lessee entered into a Water Tower Lease Agreement dated July 15, 2016 (hereinafter, referred to as the “**Agreement**”), whereby Lessor leases to Lessee certain Premises, therein described, that are a portion of the Property located at 221 Poole Street, Hartsville, South Carolina 29551; and

WHEREAS, Lessor and Lessee desire to amend the Agreement to adjust the rent (as defined below) in conjunction with the modifications to Lessee's equipment permitted herein; and

WHEREAS, Except, as expressly modified herein, the terms and provisions of the Agreement shall remain in full force and effect.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree that the recitals set forth above are incorporated herein as if set forth in their entirety and further agree as follows:

1. Rent. Commencing on the earlier to occur of: (i) the first day of the month in which Lessee commences modification of its equipment on the Premises; or (ii) July 1, 2018; the annual rent payable under the Agreement shall increase by \$1,200.00 per year. The rent increase payment for any partial lease year shall be pro-rated based on the number of months remaining in the applicable lease year.

2. Equipment Modifications. At its sole cost and expense, Lessee shall have the right to modify its equipment on the Premises as described and depicted in Exhibit "B-1", which is attached hereto and incorporated herein by this reference. Exhibit “B” to the Agreement is hereby deleted and replaced by Exhibit “B-1”.

3. Other Terms and Conditions Remain. Capitalized terms used in this Amendment shall have the same meaning defined for them in the Agreement unless otherwise indicated herein. In the event of any inconsistencies between the Agreement and this Amendment, the terms of this Amendment shall control. Except as expressly set forth in this Amendment, the Agreement otherwise is unmodified and remains in full force and effect. Lessor and Lessee reinstate ratify and affirm the terms of the Agreement and further agree that the Agreement is in full force and effect, and neither Lessor nor Lessee is in default under the Agreement as of the Effective Date. Each reference in the Agreement to itself shall be deemed also to refer to this Amendment.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute this Amendment on the dates set forth below.

LESSOR:

CITY OF HARTSVILLE

LESSEE:

**CELLCO PARTNERSHIP d/b/a
Verizon Wireless**

By: _____

Name: Natalie M. Zeigler

Title: City Manager

Date: _____

Attested By: _____

By: _____

Name: Niraj Patel

Title: Director - Network Field Engineering

Date: _____

Attested By: _____

EXHIBIT "B-1"

LESSEE'S TOWER MOUNTED EQUIPMENT

Equipment to be mounted to corral with a centerline of 135 feet:

Six (6) Andrew HBXX-6517DS-A2M antennas

Six (6) CSS X7C-FRO-860-VR4 antennas

Two (2) Raycap RRFDC-3315-PF-48 surge suppressors

Three (3) Ericsson Radio 4449 remote radio modules

Three (3) Ericsson Radio 8843 remote radio modules

Twelve (12) lines of 1-5/8" coax

Two (2) lines of 1-5/8" hybrid fiber