

ORDINANCE 4175

AN ORDINANCE TO APPROVE AN AGREEMENT BETWEEN THE CITY OF HARTSVILLE, SOUTH CAROLINA AND ALLIGATOR RURAL WATER AND SEWER COMPANY, INC., SUPPLANTING THE WHOLESALE WASTEWATER TREATMENT CONTRACT BETWEEN SUCH PARTIES DATED MARCH 14, 1997, CONCERNING WASTEWATER TREATMENT AND DISPOSAL SERVICES.

WHEREAS, the City owns and operates a regional wastewater treatment facility with existing capacity of 3.5 million gallons per day (mgd) and is permitted for expansion to 5.5 mgd; and,

WHEREAS, the Alligator Rural Water and Sewer Company, Inc. desires to discharge its wastewater at the Darlington/Chesterfield County line to the City's wastewater system for treatment.

NOW, THEREFORE BE IT ORDAINED, by the Mayor and Council of the City of Hartsville that an agreement between the City of Hartsville and Alligator Rural Water and Sewer Company, Inc., supplanting the wholesale wastewater treatment contract between such parties dated March 14, 1997, concerning wastewater treatment and disposal services is hereby approved.

NOW, THEREFORE BE IT FURTHER ORDAINED, by the Mayor and Council of the City of Hartsville that the Mayor is hereby authorized to execute the Agreement.

BE IT FINALLY ORDAINED IN METING DULY ADVERTISED AND ASSEMBLED, on the 21st day of October, 2014 and to become effective immediately.

Approved as to form:



Martin S. Driggers, Sr.  
City Attorney



Carl M. (Mel) Pennington IV  
Mayor

ATTEST:   
Sherron L. Skipper, CMC  
City Clerk

First Reading: 10/14/2014  
Public Hearing: 10/21/2014  
Final Reading: 10/21/2014

## AGREEMENT

BY AND BETWEEN THE CITY OF HARTSVILLE, SOUTH CAROLINA AND ALLIGATOR RURAL WATER AND SEWER COMPANY, INC., SUPPLANTING THE WHOLESALE WASTEWATER TREATMENT CONTRACT BETWEEN SUCH PARTIES DATED MARCH 14, 1997, CONCERNING WASTEWATER TREATMENT AND DISPOSAL SERVICES

In consideration of the mutual promises contained herein, and other consideration, the receipt and sufficiency of which is hereby acknowledged, the CITY OF HARTSVILLE, SOUTH CAROLINA (the "*City*") and ALLIGATOR RURAL WATER AND SEWER COMPANY, INC. (the "*Company*") hereby enter this following agreement (the "*Agreement*") made **this** day of Ct.hb.e.r--, 2014, to supplant, in its entirety, the Wholesale Wastewater Treatment Contract dated March 14, 1997 (the "*Service Agreement*").

### Section 1. Findings.

- a) 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.
- b) The Company is a rural water and sewer company organized under the terms of S.C. Code Ann. §§ 33-36-10 *et seq.*, and as such possesses all powers granted to such corporations.
- c) The City operates a regional wastewater treatment facility (the "*Treatment Plant*") with existing capacity of 3.5 million gallons per day (mgd) and which is permitted for expansion to 5.5 mgd.
- d) The Treatment Plant has substantial unused capacity.
- e) The City has caused to be constructed a wastewater transmission line (the "*Transmission Line*") that the Company uses to serve certain industrial and educational customers in the McBee area of southern Chesterfield County, South Carolina.
- f) The City's portion of the Transmission Line has a capacity of approximately 1 mgd.
- g) Wastewater treatment and disposal services are provided to the Company's customers by the City through the Service Agreement which, by its term, will expire in 2020.
- h) The Service Agreement requires that the City approve all new customers connected to the Transmission Line.

b) Until such time as the Company places into operation its own wastewater treatment and disposal system (the "*Alligator WTP*"), and in consideration of the City's prior investment in facilities to service the area, the Company shall transmit to the City all wastewater collected in the McBee area.

c) At such time as the Company places the Alligator WTP into service, and until the termination of this Agreement:

i) The Company shall continue to deliver to the Transmission Line for treatment by the City all wastewater discharges from the Nestle Facility, including any wastewater discharges from any future expansions, if any, of the Nestle Facility (together, the "*Nestle Discharge*").

ii) In addition to the delivery of the Nestle Discharge, the Company will ensure that it delivers to the Transmission Line for treatment by the City at least 200,000 gpd of wastewater other than that generated by the Nestle Discharge. If less than 200,000 gpd of wastewater is generated by the Company's wastewater treatment system in the McBee area on any given day, The Company will deliver all of the wastewater generated by the Company's wastewater system in the McBee area to the Transmission Line for treatment by the City.

d) The Company shall, at all times, comply with the provisions of the City's Industrial Pretreatment Program as required by the Clean Water Act of 1977 (PL 96-217) and the General Pretreatment Regulations for Existing and New Sources of Pollution 40 CFR, Part 403), and the City's Sewer Use Ordinance.

e) The Company shall comply with such other State and Federal requirements that may be mandated in the future.

f) The Company shall allow properly authorized employees, agents or contractors of the City to carry out inspections and sampling on the non-domestic discharges within the Company's service area and to act as representatives of the Company for the purposes of the City's Industrial Pretreatment Program.

#### Section 4. Approval of New Discharges.

a) The City shall have no prior approval rights for taps for residential and commercial customers discharging domestic waste into the Company's system.

b) The Company will require all new industrial or other dischargers of non-domestic waste streams to complete a Wastewater Survey Questionnaire which shall be submitted to the City in a timely fashion to allow for review before any new tap is made.

c) The City will approve all new non-domestic discharges provided that the City determines, in its reasonable discretion relying upon accepted utility practices, will meet the operating requirements of its Treatment Plant, taking into account required pretreatment. Any disapproval shall be provided to the Company in writing as soon as is

e) Any increase in the Maximum Capacity, based upon the terms herein, shall be limited by the operating limits of the transmission lines carrying the wastewater, as mutually agreed upon by engineers for the parties to this Agreement.

f) Peak flows shall be limited only by the operating limits of the transmission lines carrying the waste, as mutually agreed upon by engineers for the parties to this Agreement.

**Section 6. Rates.** The rate charged by the City for transporting and treating the Company's wastewater shall be the rate charged by the City to residential customers located within the City's municipal boundaries with all charges expressed in gallons per day, as such rate may be amended by the City from time to time.

**Section 7. Term.** The initial term of this Agreement shall extend for a fixed term to expire on January 1, 2040. This Agreement shall thereafter automatically renew for additional subsequent five (5) year terms unless canceled by either party by giving two (2) years written notice to the other party.

**Section 8. Other Agreements.** The execution of this Agreement by the City and the Company shall serve to terminate the Service Agreement as of the date first written above.

**Section 9. Miscellaneous.**

a) This Agreement is subject to such present and future rules; regulations or laws as may be applicable to similar agreements in South Carolina and the City and Company will cooperate in order to obtain such permits, certificates or the like, as may be required to comply with any such rules, regulations or laws.

b) In the event of any occurrence rendering the Company incapable of performing under this Agreement, any successor of the Company, whether the result of legal process, assignment or otherwise, shall succeed to the rights of the Company under this Agreement.

c) This Agreement does not create any rights or interests in third parties and no third parties may support any claim hereunder.

d) Non-performance by any party of non-financial terms of this Agreement are excused by force majeure events. Force majeure events include all matters outside of the party's reasonable control. A party claiming force majeure must inform the other within three days of the event in writing and must take reasonable and diligent action to recover from it.

e) Each party represents and covenants that it has obtained all authorization and approvals needed to enter into this Agreement, that it does not violate the terms of any covenant or agreement between that party and any other party, and when executed by the officers listed below, this Agreement will be enforceable according to its terms subject to general rules of bankruptcy, receivership and creditors' rights.

f) Neither party shall have any claim against the other for lost profits, special or consequential damages.

**IN WITNESS THEREOF**, the City and the Company, acting under the authority of their respective governing bodies, have caused this Agreement to be duly executed in their names by their duly authorized officers as of the date first written above.

CITY OF HARTSVILLE, SOUTH  
CAROLINA

By:   
Carl Melvin Pennington (V), Mayor

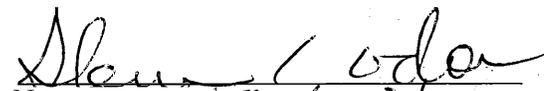
ATTEST:

[SEAL]

*cfj U ¥ALJ*

Sherron L. Skipper  
Clerk to City Council

ALLIGATOR RURAL WATER AND  
SEWER COMPANY, INC.

By:   
Print Name: Steve L. Odum  
Its: 11/11/11 \_\_\_\_\_

ATTEST:

[SEAL]

  
Secretary