



CITY COUNCIL

REGULAR AGENDA

OF

AUGUST 1, 2016



CITY OF NORTH AUGUSTA

AGENDA: REGULAR CITY COUNCIL MEETING

August 1, 2016 – Municipal Center – 100 Georgia Avenue, 3rd Floor – 7:00 P.M.

CITIZEN COMMENTS: Citizens may speak to Mayor and City Council on each item listed on this agenda. Mayor Jones will call for your comments prior to City Council discussing the matter. When speaking to Council, please step up to the microphone, give your full name and address, and direct your remarks to Mayor Jones.

CITIZEN ASSISTANCE: Individuals needing special assistance or sign interpreter to participate in the meeting, please notify the Administration Department 48 hours prior to the meeting.

1. **CALL TO ORDER:**
2. **INVOCATION AND PLEDGE OF ALLEGIANCE:**
3. **ROLL CALL:**
4. **APPROVAL OF MINUTES:** Regular and Study Session Minutes of July 18, 2016

UNFINISHED BUSINESS

None.

NEW BUSINESS

5. **FINANCE:** Franchise Agreement to Crown Castle NG East, LLC – Resolution
6. **PUBLIC SAFETY:** Contract for Indigent Defense Representation in Municipal Court with the Aiken County Public Defenders' Office - Resolution
7. **PRESENTATIONS/COMMUNICATIONS/RECOGNITION OF VISITORS:**
 - A. Citizen Comments: At this time, citizens may speak to Mayor and City Council regarding matters not listed on the agenda.
 - B. Council Comments
8. **ADJOURNMENT:**

Administration Department



TO: Mayor and City Council

FROM: B. Todd Glover, City Administrator

DATE: July 29, 2016

SUBJECT: Agenda for Regular City Council Meeting of August 1, 2016

REGULAR COUNCIL MEETING

ITEM 5. ADMINISTRATION: Franchise Agreement to Crown Castle NG East, LLC – Resolution

A resolution has been prepared for Council's consideration authorizing the City of North Augusta to grant a franchise agreement to Crown Castle NG East, LLC in connection with the provision of telecommunications service.

Please see **ATTACHMENT NO. 5** for a copy of the proposed resolution.

ITEM 6. PUBLIC SAFETY: Contract for Indigent Defense Representation in Municipal Court with the Aiken County Public Defenders' Office - Resolution

A resolution has been prepared for Council's consideration authorizing the City of North Augusta to enter into a contract with the Aiken County Public Defenders' Office for the provision of representation of indigent defendant in the Municipal Court for the City of North Augusta.

Please see **ATTACHMENT NO. 6** for a copy of the proposed resolution.

ATTACHMENT 5

RESOLUTION NO. 2016-22

A RESOLUTION AUTHORIZING THE CITY OF NORTH AUGUSTA TO GRANT A
FRANCHISE AGREEMENT TO CROWN CASTLE NG EAST, LLC IN CONNECTION
WITH THE PROVISION OF TELECOMMUNICATIONS SERVICE

WHEREAS, Crown Castle NG East, LLC has requested consent of the City of North Augusta to use the streets and public places of the municipality to construct, install, maintain, and operate its facilities for use in providing telecommunications services to its customers within the municipality for its own business purposes and profit; and,

WHEREAS, the City has considered the request by Crown Castle NG East, LLC and determined that such request in accordance with the laws of this State; and,

WHEREAS, the City has determined that it is proper and in the interest of the citizens of the City to grant such franchise.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of North Augusta, South Carolina that the City grant to Crown Castle NG East, LLC a nonexclusive franchise agreement as specified in the Franchise Agreement attached hereto, marked as "Exhibit A" and incorporated by reference.

BE IT FURTHER RESOLVED that the City Administrator is authorized to execute any documents necessary for the finalization of this matter.

DONE, RATIFIED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH AUGUSTA, SOUTH CAROLINA, ON THIS THE ____ DAY OF AUGUST, 2016.

Lark W. Jones, Mayor

ATTEST:

Donna B. Young, City Clerk

STATE OF SOUTH CAROLINA

FRANCHISE AGREEMENT

COUNTY OF AIKEN

WHEREAS, Crown Castle NG East LLC has requested consent of the City of North Augusta to use the streets and public places of the municipality to construct, install, maintain and operate its facilities for use in providing telecommunications services to its customers within the municipality for its own business purposes and profit; and,

WHEREAS, other telecommunications providers either have or are likely to seek a similar consent; and,

WHEREAS, it is the policy of the municipality to permit such entry into the corporate limits and such use of the streets and public places for the provision of telecommunication services, subject to the duty and authority of the municipality to manage its streets, public property and rights-of-way; to require fair and reasonable compensation from telecommunications providers for the use thereof on a competitively neutral and nondiscriminatory basis; and to publicly disclose the amount of such compensation; and,

WHEREAS, the Council of the City of North Augusta has enacted Ordinance Number _____ to grant Crown Castle NG East LLC (f/k/a NextG Networks of NY, Inc.) a franchise to construct, install, maintain and operate in, over, upon and under the streets and public places of the municipality, its lines, poles, wires, cables and other telecommunications facilities and equipment to render telecommunications services to its customers in the corporate limits of the City of North Augusta for such period as provided herein.

Section 1: As used in this agreement, the word "Company" means Crown Castle NG East LLC ("Crown Castle"), a limited liability company organized and existing under the laws of the State of Delaware and duly authorized to do business in South Carolina, its successors and assigns.

Section 2: As used in this agreement, the word "Municipality" means the City of North Augusta South Carolina.

Section 3: As used in this agreement, the term "Telecommunications Services" has the meaning and definition given to that same term by S.C. Code Ann. Sections 58-9-10 and 58-9-2200 (1) and 47 U.S.C. § 153; provided, however, for purposes of this agreement, the term "Telecommunications Services" does not include cable television. Cable television services may only be provided in the municipal limits pursuant to a separate franchise pursuant to 42 USC 542.

Section 4: The non-exclusive right, power and authority are hereby granted and vested in the Company to construct, install, maintain and operate in, over, under and upon the streets, alleys, bridges, rights-of-way and other public places of the Municipality, its lines, poles, antennas, wires, cables, cabinets, conduits, converters, equipment and other telecommunications facilities and to use those facilities to render Telecommunication Services to its customers within the corporate limits of the Municipality.

Section 5: Prior to the commencement or continuation of any construction or operation in the corporate limits of the Municipality, the Company shall be duly authorized to do business in South Carolina and shall have received any necessary certificate of public convenience and necessity or other required authorization from the Public Service Commission of South Carolina. Evidence that such authority has been acquired or that it is not required will be filed with the Municipality.

Section 6: All work upon the streets and public places of the Municipality shall be in accordance with all applicable standards, codes and ordinances and will be done under the general supervision of the Mayor and Council of the Municipality through the application for and administration of an encroachment permit from the Municipality. All new construction, wherever practicable, will be placed underground; however, service lines/cables and/or equipment will be allowed to be placed aboveground if other existing service lines/cables and/or equipment in that area are installed aboveground. Any necessary aboveground construction, wherever practicable, will utilize existing utility poles. No street, alley, bridge, right-of-way or other public place used by the Company shall be obstructed longer than necessary during its work of construction or repair and shall be restored to the same good order and condition as when said work was commenced. No part of any street, alley, bridge, right-of-way or other public place of the Municipality, including any public drain, sewer, catch basin, water pipe, pavement or other public improvement, shall be damaged. However, should any such damage occur, the Company shall repair the same as promptly as possible, and, in default thereof, the Municipality may make such repairs and charge the reasonable cost thereof to and collect the same from the Company. The Company shall save the Municipality harmless from all liability or damage (including judgments, decrees, court costs, and defense costs) arising out of the Company's operations within the corporate limits of the Municipality, the exercise of the privileges granted to the Company by this ordinance, or the acts or omissions of the Company's employees, contractors, or agents.

Section 7: In consideration of the grant of authority to utilize the streets and public places of the Municipality for the provision of Telecommunication Services, and in accordance with applicable laws and ordinances, the Company shall pay such lawful franchise fees, business license taxes, and administrative fees as are presently permitted by Article 20 of Chapter 9 of Title 58 of the 1976 Code of

Laws of South Carolina, as enacted in 1999, and as may be enacted and imposed by the Municipality. The Company shall also pay all such ad valorem taxes, service fees, sales taxes, or other taxes and fees as may now or hereafter be lawfully imposed on other businesses within the Municipality. Provided, however, that in the event that Article 20 of Chapter 9 of Title 58 of the 1976 Code of Laws of South Carolina, as enacted in 1999, or other laws governing franchise fees, business license taxes and/or other fees with respect to Telecommunication Services shall be substantially modified by subsequent legislation or court decision, the provisions herein contained shall be brought into conformity with the changes in the applicable law by appropriate amendment to this agreement. If the limitations on the amount of franchise fees, administrative fees, and business license taxes on providers of Retail Telecommunications Services presently contained in said statute shall be removed or modified, the Municipality will be free, by amendment to this agreement, to impose such fair, reasonable, competitively neutral and non-discriminatory fees and taxes as may then be permitted by that statute or by such applicable South Carolina and federal law as may then govern.

Section 8: Except as specifically provided herein, or otherwise mandated by law, the privilege granted to the Company by this agreement does not exempt or excuse the Company from the police power and all other lawfully imposed municipal authority and laws including, but not limited to, those relating to zoning, permitting, traffic control, construction and excavation, planning, aesthetics, and the environment.

Section 9: This agreement may be terminated by either party upon forty-five (45) days' prior written notice to the other party upon a default of any material covenant or term hereof by the other party, which default is not cured within forty-five (45) days of receipt of written notice of default (or, if such default is not curable within forty-five (45) days, if the defaulting party fails to commence such cure within forty-five (45) days or fails thereafter diligently to prosecute such cure to completion). Except as expressly provided herein, the rights under this agreement are irrevocable.

Section 10: Any notice to either party shall be in written form and addressed as follows:

If to the Municipality:
City of North Augusta
100 Georgia Avenue
North Augusta, SC 29841-3843

If to the Company:
Crown Castle NG East LLC
c/o Crown Castle USA, Inc.
2000 Corporate Drive

Canonsburg, PA 15317-8564
Attention: General Counsel, Legal Department

With a copy (which shall not constitute legal notice) to:
Crown Castle NG East LLC
Attention: SCN Contracts Administration
2000 Corporate Drive
Canonsburg, PA 15317-8564

Section 11: This agreement constitutes the entire agreement of the Parties and may be modified only by a subsequent written instrument.

Section 12: This agreement shall be binding upon the parties hereto, their legal representatives, successors and assigns.

IN WITNESS WHEREOF, the Parties have caused this Franchise Agreement to be executed on the date the Council of the Municipality formally enacted Ordinance Number _____.

WITNESSES

The Company
Crown Castle NG East LLC

By: _____

Name: _____

Its: _____

The Municipality
City of North Augusta, South Carolina

By: _____

Name: _____

Its: _____

STATE OF SOUTH CAROLINA

PROBATE

COUNTY OF AIKEN

PERSONALLY appeared before me, the undersigned witness, and made oath that (s)he saw the within named _____ sign, seal and as their Act and Deed deliver the within written Franchise Agreement, and that (s)he with the other witness described above witnessed the execution thereof.

SWORN to before me this _____
Day of _____, _____.

Notary Public for South Carolina
My commission expires: _____

STATE OF SOUTH CAROLINA

PROBATE

COUNTY OF AIKEN

PERSONALLY appeared before me, the undersigned witness, and made oath that (s)he saw the within named _____ sign, seal and as their Act and Deed deliver the within written Franchise Agreement, and that (s)he with the other witness described above witnessed the execution thereof.

SWORN to before me this _____
Day of _____, _____.

Notary Public for South Carolina
My commission expires: _____

ATTACHMENT 6

RESOLUTION NO. 2016-23

RESOLUTION AUTHORIZING THE CITY OF NORTH AUGUSTA TO ENTER INTO A CONTRACT WITH THE AIKEN COUNTY PUBLIC DEFENDERS' OFFICE FOR THE PROVISION OF REPRESENTATION OF INDIGENT DEFENDANT IN THE MUNICIPAL COURT FOR THE CITY OF NORTH AUGUSTA

WHEREAS, as a result of changes by the South Carolina Legislature, as part of the 2015 budget process, a proviso was placed within the budget that directed that the Public Defenders' Offices could not provide representation to indigent Defendants and the Municipal Courts of this State unless the City where the Municipal Court is held, enters into a Contract for Services with the Public Defenders' Office; and,

WHEREAS, as a result of such change, the City entered into a contract for the first six (6) months of 2016 with the Public Defenders' Office for the provision of services; and,

WHEREAS, the General Assembly has not made any changes to this requirement; and,

WHEREAS, the original six (6) month contract has expired; and,

WHEREAS, it is necessary that the City make arrangements for the continued provision of indigent defense in the Municipal Court; and,

WHEREAS, the City Council has determined that it would be appropriate to enter into an additional six (6) month contract with the Public Defenders' Office under the same terms and conditions as the previous contract.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of North Augusta, South Carolina that the contract attached hereto, marked as "Exhibit A" and incorporated by reference, with the Aiken County Public Defender's Office is hereby authorized.

BE IT FURTHER RESOLVED that the funding source for the cost related to this contract shall be the Justice and Law Division of the General Fund.

BE IT FURTHER RESOLVED that the City Administrator is authorized to execute any documents necessary for the finalization of this matter.

DONE, RATIFIED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH AUGUSTA, SOUTH CAROLINA, ON THIS THE ____ DAY OF AUGUST, 2016.

Lark W. Jones, Mayor

ATTEST:

Donna B. Young, City Clerk

Exhibit A to Resolution 2016-23
AGREEMENT FOR SERVICES

This Agreement, is entered into as of the 1st day of July, 2016, between the CITY OF NORTH AUGUSTA (the "City") and the PUBLIC DEFENDER OF THE SECOND JUDICIAL CIRCUIT (the "Public Defender"), and those parties hereby agree to the following terms in consideration of the mutual benefits and promises to each party set forth hereinafter.

1. TERM OF AGREEMENT

The initial term of this Agreement shall commence retroactively as of July 1, 2016 and shall expire on December 31, 2016, unless the parties mutually agree in writing to an extension of the term of this Agreement.

2. DELIVERY OF SERVICES

The Public Defender shall provide legal representation to indigent defendants in the City's Municipal Court who apply for and are found qualified to receive such services by the Aiken County Bond Court under the applicable laws and rules of court of the State of South Carolina after screening by the Aiken County Bond Court and the Public Defender to assess the applicant's qualifications for such services. The City's Municipal Court shall be provided a copy of each order appointing counsel to a defendant in the City's Municipal Court. The Public Defender and Judge of the City's Municipal Court shall consult with each other as needed to discuss how the appointment process might be improved or how to address concerns about appointments in specific cases.

3. BILLING AND PAYMENT

The Public Defender shall provide the City an itemized invoice City after the end of each calendar month at the rate of \$400.00 for each defendant appointed to be represented by the Public Defender by the Aiken County Bond Court during that month. The City shall remit payment on the invoice within 20 days of receipt of the invoice. Prior to the date the first monthly invoice is issued, the Public Defender, the City and the Aiken County Finance Director shall agree on how the payee will be listed on the City's payments for these services and to what address they will be sent or delivered. The Public Defender and City will work cooperatively to resolve any billing or payment issues.

4. COORDINATION OF SERVICES

The person responsible for coordinating the services under this Agreement for the Public Defender is:

Name: Grant Gibbons
Title: Circuit Defender for 2nd Judicial Circuit
Phone: 642-1732
Email: ggibbons@aikenpd.com.

The person responsible for coordinating the services under this Agreement for the City is:

Name: Cindy Luckey
Title: Court Supervisor
Phone: 441-4273
Email: cluckey@northaugusta.net.

5. **INSURANCE**

At all times during every term of this Agreement, the Public Defender will be responsible for providing insurance coverages for its employees or agents providing the services that are the subject of this Agreement.

6. **AMENDMENTS**

This Agreement shall not be amended, altered or changed except by a written agreement signed by both parties.

WHEREAS, each party to this Agreement has caused it to be executed on its behalf by its authorized representative, and this Agreement is effective as of the date entered in the first paragraph on page 1 hereof.

Public Defender of the Second Judicial Circuit

City of North Augusta, South Carolina

By: _____

By: _____

Title: Circuit Defender

Title: City Administrator

Date: _____, 2016

Date: _____, 2016

