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1 **2022-41 (2<sup>ND</sup> READING): TO TERMINATE THE INTERGOVERNMENTAL**  
2 **AGREEMENT ADOPTED PURSUANT TO ORDINANCE NO. 2004-33**

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3 **Applicant/Purpose:** Staff / to terminate intergovernmental agreement

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5 **Brief:**

- 6 • In 2004, the City and Horry County entered into an intergovernmental agreement  
7 providing for distribution of certain funds held by the City derived from rentals  
8 already received and future rental proceeds from tenants leasing the Seascope  
9 Properties.
- 10 • Under the intergovernmental agreement, 75% of the proceeds from the Seascope  
11 leases is distributed to Horry County and 25% is distributed to the City.
- 12 • Horry County has asserted, among other things, that it is entitled to the entirety of  
13 the proceeds from rentals of the Seascope Properties.
- 14 • Because the 2004 intergovernmental agreement contains no term and no term can  
15 be reasonably implied, the City is authorized to terminate the 2004  
16 intergovernmental agreement with reasonable notice to Horry County.
- 17 • No changes since 1<sup>st</sup> reading.

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19 **Issues:**

- 20 • The Ordinance contemplates the City will pass an accompanying resolution  
21 providing for the disposition of the rental revenues derived from the leases of the  
22 Seascope Properties.
- 23 • The proposed resolution calls for 75% of the rental proceeds derived from the  
24 current leases of the Seascope Properties to be reflected in a ledger account as  
25 being held in escrow pending a final determination of the administrative proceeding  
26 before the Federal Aviation Administration; 25% of the rental proceeds from the  
27 current leases of the Seascope Properties will continue to be deposited in the  
28 City's General Fund.

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30 **Public Notification:** Normal meeting notification.

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32 **Alternatives:**

- 33 • Amend Ordinance
- 34 • Deny Ordinance

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36 **Financial Impact:**

- 37 • See Issues above.

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39 **Manager's Recommendation:**

- 40 • I recommend 1<sup>st</sup> reading (9.27.22).
- 41 • I recommend approval (10.11.22).

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43 **Attachment(s):** Ordinance, Notice of Termination

CITY OF MYRTLE BEACH  
COUNTY OF HORRY  
STATE OF SOUTH CAROLINA

TO TERMINATE THE INTERGOVERNMENTAL  
AGREEMENT ADOPTED PURSUANT TO  
ORDINANCE NO. 2004-33

WHEREAS, by Ordinance No. 2004-33, duly adopted by the City Council of the City of Myrtle Beach ("City") on May 5, 2004, the City entered into that certain Intergovernmental Agreement (the "2004 IGA") with Horry County ("County") providing for a distribution of certain funds held by the City derived from rentals already received, and future proceeds from the rentals to be received by the City, from tenants leasing portions of a One Hundred Forty Three (143) acre parcel of land owned by the City (the "Seascape Properties"); and

WHEREAS, the 2004 IGA provides that future rental proceeds from the Seascape Properties may be used for any purpose; and

WHEREAS, the County brought a civil action against the City in the Horry County Court of Common Pleas, under Civil Action Number 2020-CP-26-07070, by which action the County unsuccessfully attempted to have the City enjoined from selling the Seascape Properties, as authorized by City Council in its duly adopted Ordinance Numbers 2020-048 and 2020-049, asserting therein various positions, including that the City cannot sell the Seascape Properties, that the County is entitled to the entirety of proceeds from rentals of the Seascape Properties, that the proceeds of the sale of the Seascape Properties authorized by the City Council are insufficient, and that the proceeds of any such sale belong in their entirety to the County; and

WHEREAS, the result of the County's civil action was the issuance of an order of the Circuit Court for the Fifteenth Judicial Circuit dated January 25, 2021, concluding, among other things, that the County has no interest, legal, equitable, or otherwise in the Seascape Properties which allows it to control the disposition of same or to receive the proceeds thereof, from which order no appeal was taken and after which the County voluntarily dismissed its claims asserted therein; and

WHEREAS, the County thereupon instituted an administrative proceeding against the City before the Federal Aviation Administration (the "FAA") in which proceeding the County has asserted, in addition to positions asserted in the aforementioned civil action, that the proceeds from a lease or sale of the Seascape Properties must be used solely for airport purposes, which proceeding remains pending; and

WHEREAS, the County's institution of legal and administrative proceedings constitutes a repudiation of the 2004 IGA generally and specifically with respect to the use of the proceeds derived from the Seascape Properties; and

WHEREAS, the 2004 IGA contains no term and no term can be reasonably implied by its circumstances given that perpetual agreements are both disfavored by law and, in this instance, would constitute an unlawful delegation of the authority of City Council to determine the disposition of real property owned by the City; and

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WHEREAS, the City is authorized to terminate the 2004 IGA and reasonable notice of such termination has been given by the County's own legal action and administrative complaint repudiating same, the City's response to same, and the public noticing and readings of the instant ordinance,

NOW, THEREFORE, BE IT ORDAINED that the City Council hereby authorizes the City Manager to issue the attached Notice of Termination to the County, same to be effective October 14, 2022, whereupon the 2004 IGA will be deemed terminated, null, void and of no further effect.

BE IT FURTHER ORDAINED THAT the rental revenues derived from the lease of the Seascape Properties, and proceeds from the sale of same, shall be disposed of by the City in accordance with a resolution to be adopted in form by City Council pertaining to same on the date of the first reading hereof, such resolution to be effective upon the effective date of this ordinance.

This ordinance is effective upon second reading.

ATTEST:

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BRENDA BETHUNE, MAYOR

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JENNIFER ADKINS, CITY CLERK

1<sup>st</sup> Reading: 9-27-2022  
2<sup>nd</sup> Reading: 10-11-2022