

ORDINANCE NO. 2004-089

AN ORDINANCE AUTHORIZING THE CITY OF COLUMBIA, SOUTH CAROLINA, TO ENTER INTO AND APPROVING THE FORM AND TERMS OF AN INSTALLMENT SALE AGREEMENT BETWEEN THE CITY OF COLUMBIA, SOUTH CAROLINA, AND THE COLUMBIA PUBLIC FACILITIES CORPORATION; APPROVING THE FORM AND TERMS OF A TRUST AGREEMENT BETWEEN COLUMBIA PUBLIC FACILITIES CORPORATION AND A CORPORATE TRUSTEE NAMED THEREIN, IN CONNECTION WITH THE CONSTRUCTION AND RENOVATION OF CERTAIN TOURISM-RELATED PROJECTS WITHIN THE CITY; CONSENTING IN THE INSTALLMENT SALE AGREEMENT TO THE ISSUANCE OF CERTIFICATES OF PARTICIPATION, SERIES 2004, IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT EXCEEDING \$22,000,000; APPROVING THE FORM OF A CERTIFICATE PURCHASE CONTRACT WITH COLUMBIA PUBLIC FACILITIES CORPORATION AND BB&T CAPITAL MARKETS AND SBK-BROOKS INVESTMENT CORP.; AND OTHER MATTERS RELATED THERETO.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLUMBIA, SOUTH CAROLINA, AS FOLLOWS:

Section 1.     Definitions. The terms defined in this Section for all purposes of this Ordinance shall have the respective meanings as set forth in this Section. The term:

"2004 Projects" means the improvements, facilities and projects to be acquired, constructed, renovated and installed in the City as described in this Ordinance.

"Certificate" or "Certificates" means any one or all of the Certificates authorized by and secured under the Trust Agreement, including the Series 2004 Certificates and any Additional Certificates (as such terms are defined in the Trust Agreement).

"City" means the City of Columbia, South Carolina, a municipal corporation duly organized and existing under the laws of the State.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, or any successor internal revenue laws of the United States enacted by the Congress of the United States in replacement thereof. References to the Code and sections of the Code include relevant applicable regulations, temporary regulations and proposed regulations thereunder and any successor provisions to those sections, regulations, temporary regulations or proposed regulations.

"Corporation" means Columbia Public Facilities Corporation, a nonprofit corporation organized and existing under the laws of the State, and its successors and assigns.

"Council" means the City Council of the City.

"Hospitality Fee" means the local hospitality tax imposed by the City pursuant to South Carolina Code Sections 6-1-700 to 6-1-770 and the Hospitality Fee Ordinance, which is equal to two percent (2%) on the gross proceeds of the sale of prepared meals and beverages in establishments within the City.

"Hospitality Fee Ordinance" means Ordinance No. 2003-17 enacted by the City Council on April 23, 2003, to be effective June 30, 2003, which imposed the Hospitality Fee.

"Installment Sale Agreement" means the Installment Sale Agreement dated as of a date as may be determined by the Mayor or the City Manager, or either one of them acting alone, with advice from the City Attorney, between the Corporation and the City, as amended or supplemented from time to time.

"Series 2004 Certificates" means the not exceeding \$22,000,000 aggregate principal amount of the Columbia Public Facilities Corporation Certificates of Participation Evidencing Undivided Proportional Interests in Base Fee Payments Under an Installment Agreement (Hospitality Fee Pledge), Series 2004, issued pursuant to the terms of the Trust Agreement.

"South Carolina Code" shall mean South Carolina Code of Laws 1976 as amended.

"Trust Agreement" means the Trust Agreement dated as of a date as may be determined by the Mayor or the City Manager, or either one of them acting alone, with advice from the City Attorney, between the Corporation and the Trustee, pursuant to which the Certificates will be issued.

"Trustee" means a corporate trustee to be named in the Trust Agreement, or any successor Trustee that may become the Trustee pursuant to the applicable provisions of the Trust Agreement.

"Underwriters" means BB&T Capital Markets, a Division of Scott & Stringfellow, Inc., and SBK-Brooks Investment Corp.

Section 2. Findings and Determinations. The Council hereby finds and determines:

A. The City is an incorporated municipality located in portions of Richland County and Lexington County and as such possesses all powers granted to municipalities by the Constitution and laws of this State.

B. Pursuant to Section 5-5-10 of the South Carolina Code, the City has selected the Council-Manager form of government and is governed by a Council composed of a Mayor and six council members which constitute the governing body of the City.

C. Section 5-7-30 of the South Carolina Code provides, in part, that municipalities may enact ordinances, not inconsistent with the Constitution and general law of the State, respecting any subject which appears necessary and proper for the security, general welfare, and convenience of the municipality and for the preservation of the general health, peace, order and good government in the municipality, and further, under the case of Williams v. Town of Hilton Head, 429 S.E.2d 802 (1993) a municipality may enact regulations (ordinances) without the requirement for further specific statutory authorization so long as such regulations are not inconsistent with the Constitution and general law of the State. Section 5-7-40 of the South Carolina Code empowers all municipalities to own and possess real and personal property.

D. Pursuant to the authorization granted by the General Assembly to municipalities in Sections 6-1-700 to 6-1-770 of the South Carolina Code (collectively, the "Act"), the City Council imposed the Hospitality Fee. While the General Assembly utilized the words "local hospitality tax" in the Act as a means by which to designate the charge authorized to be imposed for the charges imposed for food and beverages, it was the intent of the City Council to impose such charge as a "hospitality fee" pursuant to the provisions of the Hospitality Fee Ordinance.

E. It is a well established principle of South Carolina law that the use of a particular word is not determinative of its characterization. Jackson v. Breeland, 88 S.E. 128, 103 S.C. 184 (1915). As set forth in Brown v. County of Horry, 417 S.E.2d 565, 308 S.C. 180 (1992), the factors that are of paramount importance to the analysis of whether a charge constitutes a "tax" or a "fee" are the following: (1) the purpose behind its imposition; (2) the intended portion of the community that will be charged; and (3) the dedication of the sums so collected to the purpose for which it is charged. The Council finds that its actions in (1) imposing the Hospitality Fee upon prepared food and beverages sold for immediate consumption or take out from establishments within the corporate limits of the City and (2) segregating the collections received from such fees in order that such sums be utilized according to the Act meet the test enunciated in Brown such that the charges imposed pursuant to the provisions of the Hospitality Fee Ordinance constitute fees.

F. A vibrant tourism industry fosters and enhances the economic growth and well being of a community and its residents. Tourism has been and continues to be a major industry for the City. The City, through its Convention and Visitors Bureau, as well as surrounding counties and municipalities and community businesses, have initiated efforts to promote tourism to the City and surrounding areas and to the City's facilities and attractions. To date, the City has invested significant funds in its Downtown area, the Congaree Vista Area and other areas within the City. Moreover, as the City's tourism industry expands, the City must make provision to increase municipal services and facilities in order to accommodate the needs of tourists and to attract additional tourism. Tourists enjoy and utilize the special benefits which the City provides.

G. By imposing the Hospitality Fees the City has provided a method to alleviate the increased financial burden on resources of the City in providing services and facilities needed to attract and support tourism. Moneys generated by the Hospitality Fees are being used, in part, to provide municipal services and facilities which serve visitors and tourists.

H. The Council proposes to undertake the 2004 Projects, each of which will promote additional tourism to the City. The 2004 Projects consist of the following individual projects, to wit:

(1) Canal Front projects ("Canal Front") which consists of the construction of an 8,000 square foot building and other improvements, landscaping and equipment related thereto, to be located between the east bank of the Columbia Canal and EdVenture Children's Museum ("EdVenture"), designed to serve as a corollary destination for tourists visiting the South Carolina State Museum and EdVenture, at an estimated cost of \$7.1 million (of which approximately \$3.0 million is expected to be financed with the proceeds of the Series 2004 Certificates);

(2) a way finder sign program to be constructed and installed within the central portion of the City which will include direction signage to assist visitors find landmark areas and tourist destinations (including but not limited to the Congaree Vista Area, Five Points, the South Carolina State Museum, EdVenture, the Columbia Convention Center) at an estimated cost of \$1.0 million (of which \$850,000 is expected to be financed with the proceeds of the Series 2004 Certificates);

(3) construction of a new tennis and recreational complex (the "Southeast Tennis Center"), including 30 tennis courts on approximately 61 acres, an educational center and a lake, and renovation of the existing Columbia Tennis Center (the "Columbia Tennis Center" and, together with the Southeast Tennis Center, the "Tennis Centers"), including the reconstruction and expansion from 14 existing tennis courts to 16 tennis courts, the replacement of the existing lighting system, the relocation and renovation of the club house, and related parking expansion and reconfiguration of traffic controls, at an estimated cost of \$5.3 million (all of which is expected to be financed with the proceeds of the Series 2004 Certificates);

(4) improvements to Finlay Park (the "Finlay Park Improvements") consisting of various landscaping, irrigation and related projects, at an estimated cost of \$600,000 (all of which is expected to be financed with the proceeds of the Series 2004 Certificates);

(5) improvements to the 1200, 1300 and 1400 blocks of Main Street (the "Main Street Project") and Harden Street in the Five Points area (the "Five Points Project"), at estimated costs of \$6.7 million (of which \$2.5 million is expected to be financed with the proceeds of the Series 2004 Certificates) and \$32.0 million (of which \$5.8 million is expected to be financed with the proceeds of the Series 2004 Certificates), respectively.

I. The Council has been advised and recognizes that Hospitality Fees and the proceeds of the Series 2004 Certificates must be used exclusively for tourism-related buildings, tourism-related cultural and recreational facilities and roads and streets providing access to tourist destinations. By constructing Canal Front, the City will provide access to one of the City's least utilized assets, the Congaree River. Such project was contemplated by the Three Rivers Greenway Master Plan developed over the past ten years among the City, Richland County, Lexington County, the City of Cayce, the City of West Columbia and several representatives of the business community in and around the City. It is expected that Canal

Front will complement the Three Rivers Greenway and, together, such projects will attract businesses and additional tourists to the City and the adjacent area. The improvements at Finlay Park will upgrade the existing facilities which are heavily utilized by tourists to the City. Representatives of the United States Tennis Association have strongly encouraged the City to improve and/or upgrade its existing tennis facilities, noting that improvements to the Tennis Centers will allow the City to market and attract to such Tennis Centers regional and State-wide tennis tournaments to the City. Further, area businesses will benefit from the influx of participants and their families coming to the City to participate in such tournaments. The Main Street Project and the Five Points Project will improve access to tourist destinations and, as recommended by the City Center Partnership and the Five Points Business Association, respectively, will attract new tourist-related businesses to areas served by such streets.

J. In order to undertake the 2004 Projects, it is proposed that the City enter into the Installment Sale Agreement under which:

(i) the Corporation will agree to cause to be issued and sold the Series 2004 Certificates;

(ii) the Corporation will acquire from the City the City's interests in the 2004 Projects (the "City Interests," as more particularly defined in the Installment Sale Agreement), and the City will reacquire the City Interests from the Corporation;

(iii) the Corporation will make available to the City the proceeds from the sale of the Series 2004 Certificates for the purposes of defraying the costs of the 2004 Projects (including the reimbursement of the City for other moneys of the City (the "City Moneys") expended therefor) and for such other purposes as are provided herein and in the Installment Sale Agreement and the Trust Agreement; and

(iv) the City will agree to make Base Fee Payments and Additional Fee Payments, secured by Hospitality Fees (as such terms are defined in the Installment Sale Agreement) imposed pursuant to the Hospitality Fee Ordinance, in such amounts and at such times as will be specified in the Installment Sale Agreement.

K. The Hospitality Fees may be used only for the purposes stated in Section 6-1-730 of the South Carolina Code. The Hospitality Fee constitutes an "enterprise charge" within the meaning of Section 11-27-110(A)(4) of the South Carolina Code and the Installment Sale Agreement constitutes an "enterprise financing agreement" within the meaning of Section 11-27-110(A)(5) of the South Carolina Code and as such the Installment Sale Agreement shall not be included within the City's constitutional debt limitation.

L. The Council finds that the proceeds of the Series 2004 Certificates authorized by this Ordinance, as well as the Hospitality Fees pledged in connection therewith, will be used for a public purpose and that the issuance of the Series 2004 Certificates is necessary and in the best interest of the City. The 2004 Projects will be owned by the City. It is estimated that the period of construction of the 2004 Projects will continue through July of 2007.



M. It is now in the best interest of the City for the Council to approve the issuance and sale by the Corporation of the Series 2004 Certificates in the principal amount of not exceeding \$22,000,000. The proceeds of the Series 2004 Certificates shall be used for the purposes of (a) defraying the Costs of the 2004 Projects (as defined in the Trust Agreement); (b) paying the premiums for a surety bond to satisfy the reserve requirement for the reserve account created under the Trust Agreement and the municipal bond insurance policy; and (c) paying the costs of issuance of the Series 2004 Certificates.

N. The undertakings authorized by this Ordinance are necessary and in the best interest of the City and will assist and enhance the City in the acquisition and construction of the 2004 Projects. The financing transaction authorized by this Ordinance for such purposes is necessary, and the proceeds therefrom will be issued for a corporate purpose and a public purpose of the City.

Section 3. Approval of Transaction. The City, for the purposes of the financing contemplated by the Installment Sale Agreement and the Trust Agreement, represents that it either currently owns the land upon which the 2004 Projects will be constructed or will own the improvements comprising portions of the 2004 Projects and that all of the 2004 Projects will be located within the geographic boundaries of the City.

Pursuant to the Installment Sale Agreement, the City will sell the City Interests to the Corporation and will purchase the City Interests and all improvements to be constructed on such land as part of the 2004 Projects, back from the Corporation in consideration of the payment by the City to the Corporation or its assigns of Base Fee Payments and certain Additional Fee Payments.

Pursuant to the Trust Agreement, the Corporation's right to receive the Base Fee Payments and rights to receive certain of the Additional Fee Payments, as provided in the Trust Agreement and in the Installment Sale Agreement (with certain exceptions as provided in the Trust Agreement and the Installment Sale Agreement), will be assigned to the Trustee.

There will be authenticated and delivered by the Trustee pursuant to the Trust Agreement one or more Certificates evidencing proportionate undivided interests in Base Fee Payments.

The net proceeds from the sale of the Series 2004 Certificates to the Registered Owners of the Series 2004 Certificates (the "Registered Owners") will be disbursed at the direction of the City, as agent for the Corporation (as provided in the Installment Sale Agreement), to pay the Costs of the 2004 Projects (or to reimburse the City for the City Moneys previously expended therefor), to pay the premium for a surety bond to satisfy the reserve requirement for the reserve account created under the Trust Agreement, to pay the costs of issuance of the Series 2004 Certificates, including the municipal bond insurance policy premium, and for such other purposes as are set forth in the Installment Sale Agreement and the Trust Agreement.

The Council does hereby approve the sale of the City Interests to the Corporation pursuant to the Installment Sale Agreement and the purchase of the City Interests by the City from the Corporation pursuant to the Installment Sale Agreement, such agreements being central aspects of the transaction through which the Series 2004 Certificates shall be issued, such issuance being approved herein. The Council does hereby ratify and approve the actions taken by certain officials and employees of the City in connection with the establishment and organization of the Corporation and authorize such officials and employees to take such further actions as may be necessary in connection therewith. The Council does hereby approve the purposes and activities of the Corporation with respect to the Corporation's actions consistent with this Ordinance and authorizes the consummation of the transactions authorized by this Ordinance.

Section 4. Certificates to Evidence Undivided Proportionate Interests in Obligations of the City. The City intends for the Certificates issued by the Corporation to be considered evidences of undivided proportionate interests in obligations of the City under Section 103(a) of the Code.

Section 5. Approval of Installment Sale Agreement. The form, terms and provisions of the Installment Sale Agreement, a copy of which has been presented to Council and filed with the Clerk of the City, be and are hereby approved. The Mayor or the City Manager, or either one of them acting alone, be and is hereby authorized, empowered and directed to execute, acknowledge and deliver, and the Clerk of City be and is hereby authorized, empowered and directed to attest, the Installment Sale Agreement in the name and on behalf of the City, and thereupon to cause the Installment Sale Agreement to be delivered to the Corporation. The Mayor or the City Manager, or either one of them acting alone, with advice from the City Attorney, be and is hereby delegated the authority to approve such changes in the form, terms and provisions of the Installment Sale Agreement as may be appropriate for the financing plan contemplated thereby. The execution of the Installment Sale Agreement shall constitute conclusive evidence of approval of any and all changes or revisions therein from the form of Installment Sale Agreement now before this meeting. Any amendment to the Installment Sale Agreement shall be executed in the same manner.

Section 6. Approval of the Trust Agreement. The form of the Trust Agreement, a copy of which has been presented to Council and filed with the Clerk of the City, is hereby approved. The City does hereby approve and consent to the Trust Agreement with such changes in the form, terms and provisions thereof as the Mayor or the City Manager, or either one of them acting alone, with advice from the City Attorney, shall approve.

Section 7. Approval of Certificate Purchase Contract. The Mayor or the City Manager, or either one of them acting alone, with advice from the City Attorney, be and is hereby delegated the authority to approve the form, terms and provisions of the Certificate Purchase Contract between the Underwriters and the City providing for the purchase and sale of the Series 2004 Certificates (the "Purchase Contract"), a copy of which has been presented to Council and filed with the Clerk of the City. The Mayor or the City Manager, or either one of them acting alone, be and is hereby authorized to execute, acknowledge and deliver the Purchase Contract in the name or and on behalf of the City without further authorization so long as the net interest cost of the Series 2004 Certificates does not exceed 6.00% per annum.

The execution of the Purchase Contract shall constitute conclusive evidence of approval of the form, terms and provision of the Purchase Contract.

Section 8. Official Statement. The form and content of the Preliminary Official Statement to be dated as determined by the Underwriters, a copy of which has been presented to Council and filed with the Clerk of the City, pertaining to the sale of the Series 2004 Certificates by the Underwriters, and the distribution of the same, is hereby ratified and approved. The Mayor or the City Manager, or either one of them acting alone, with advice from the City Attorney, be and is hereby authorized to approve the form of the Official Statement pertaining to the sale of the Series 2004 Certificates by the Underwriters, and to deem the Preliminary Official Statement to be "final" as described in SEC Rule 15c2-12(b)(1) for the purposes of such Rule.

Section 9. Trustee, Registrar and Paying Agent. The Mayor or the City Manager, or either one of them acting alone, are fully empowered and authorized to appoint one or more corporate banks as Trustee, Registrar and Paying Agent under the terms and conditions provided in the Trust Agreement. The Mayor or the City Manager, or either one of them acting alone, is hereby delegated the authority to determine a successor trustee or a replacement trustee if for any reason such bank or banks does not serve in such capacities under the Trust Agreement.

Section 10. Authorization. The Mayor or the City Manager, or either one of them acting alone, and the City Clerk and Finance Director are fully empowered and authorized to take such further action and to execute and deliver such additional documents as may be reasonably requested by the Corporation and the Trustee to effect the delivery of the Installment Sale Agreement, the Trust Agreement and the Purchase Contract in accordance with the terms and conditions therein set forth, and the transactions contemplated hereby and thereby, and the action of such officers in executing and delivering any of such documents, in such form as the Mayor or the City Manager, or either one of them acting alone, shall approve, is hereby fully authorized. The authorization conferred herein shall extend to and include, but not be limited to, the documents and certificates reasonably expected to be necessary for the closing of the financing transaction, including, but not limited to, deeds or other instruments of conveyance, a general certificate of the City, a certificate as to the official statement, any designation of City representatives, and such other documents required to be executed in connection with the bond insurance policy or surety bond to be obtained with respect to the Series 2004 Certificates. The Council hereby retains the law firm of McNair Law Firm, P.A., and Stephen K. Benjamin, Esq. as co-special counsel in connection with respect to the Series 2004 Certificates.

Section 11. Federal Tax Covenants. The City agrees and covenants that it will comply with all applicable portions of the Code, as in effect or hereafter amended, including Sections 103 and 141 through 150 thereof, and the regulations of the Treasury Department thereunder, to maintain the exclusion from gross income for federal income tax purposes of the interest components of the Base Fee Payments under the Installment Sale Agreement pursuant to the terms of the Series 2004 Certificates, including without limitation the proper use and expenditure of proceeds of the Series 2004 Certificates, the observation of the applicable investment limitations provided in the Code, the filing of information reports



with the Internal Revenue Service and the rebate of certain arbitrage earnings on such proceeds to the United States Government.

Section 12. Severability. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 13. Conflicts with Preceding Ordinances. Should conflicts arise between this and any preceding ordinances, this Ordinance shall prevail with respect to the conflicting sections.

All rules, regulations, resolutions and parts thereof, procedural or otherwise, in conflict herewith or the proceedings, to the extent of such conflict, are hereby repealed and this Ordinance shall take effect and be in full force from and after its enactment.

This Ordinance shall be forthwith codified in the Code of City Ordinances in the manner required by law.

ENACTED this 20th day of October, 2004.

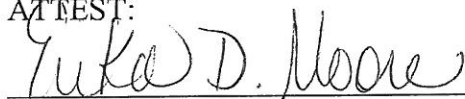
CITY OF COLUMBIA, SOUTH CAROLINA



\_\_\_\_\_  
Mayor

(SEAL)

ATTEST:



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Clerk

First Reading:        October 6, 2004  
Second Reading:     October 20, 2004