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**ORDINANCE NO.: 2021-051**

(Bull Street Parking Facility 2/Construction and Development)

APPROVING THE USE OF CERTAIN FUNDS OF THE CITY OF COLUMBIA, SOUTH CAROLINA, IN ORDER TO ACQUIRE, CONSTRUCT, EQUIP AND DEVELOP LAND AND IMPROVEMENTS WITHIN THE BULL STREET DEVELOPMENT TO PROVIDE ONE OR MORE PARKING FACILITIES AND PAY CERTAIN COSTS ASSOCIATED WITH THE DEVELOPMENT THEREOF; AND OTHER MATTERS RELATING THERETO

WHEREAS, the City of Columbia, South Carolina (the “City”), is an incorporated municipality located in Richland County and Lexington County, and as such possesses all powers granted to municipalities by the Constitution and general laws of this State; and,

WHEREAS, pursuant to Section 5-5-10, Code of Laws of South Carolina, 1976, as amended (the "SC Code"), the City has selected the City Council-Manager form of government and is governed by a Council (the “City Council”) composed of a Mayor and six council members which constitute the governing body of the City; and,

WHEREAS, 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; and,

WHEREAS, the City and BullStreet Development, LLC, as successor in interest to Hughes Development Corporation (the “Developer”), are parties to that certain Development Agreement Bull Street Neighborhood dated July 31, 2013 (as extended, assigned, and amended, the “Bull Street Development Agreement”) pursuant to which the parties memorialized their respective contributions and commitments to the phased development and necessary public improvements for the mixed use development on approximately 181 acres located in the City (the “BullStreet Project”); and,

WHEREAS, parking is an essential public service provided by the City serving a valid and valuable public purpose and is a benefit to the City and the BullStreet Project which is located in the City; and,

WHEREAS, pursuant to the Bull Street Development Agreement, upon the achievement of certain milestones by Developer, the City is obligated to construct or cause to be constructed structured parking facilities designated by Developer as required to achieve the desired urban scale and character of the BullStreet Project which facilities are to include parking garages which shall contain a total of no more than 1,600 parking spaces (with such permissible additional parking facilities as contemplated in the Bull Street Development Agreement) (the “Parking Facilities”); and,

WHEREAS, the Developer has achieved and surpassed the milestones required by the Bull Street Development Agreement for the construction of the Parking Facilities; and,

WHEREAS, pursuant to Ordinance No. 2020-106 and Resolution No. R-2020-103 enacted or adopted by the City Council on December 1, 2020, the City undertook the finance and development of the first of the Parking Facilities, together with equipment necessary for the operation thereof, which shall contain in the aggregate approximately eight hundred sixty-eight (868) parking spaces (the “Parking Facility 1”); and,

WHEREAS, the City desires to cause the second of the Parking Facilities, together with equipment necessary for the operation thereof, which shall contain in the aggregate no less than seven hundred thirty-two (732) parking spaces (the “Project” or “Parking Facility 2”), to be constructed in order to fulfill its obligations under the Bull Street

Development Agreement; and,

WHEREAS, pursuant to the Bull Street Development Agreement, Developer is to convey sufficient real property free of monetary liens and with marketable title, consisting of one or more parcels, to the City for the Project (collectively, the “City Parcels”); and,

WHEREAS, pursuant to the Bull Street Development Agreement, Developer has advised the City that the Project may consist of two multi-story parking facilities (each a “Project Component”) that collectively total no less than seven hundred thirty-two (732) parking spaces; and,

WHEREAS, each Project Component, including the City Parcels, will be owned by the City and operated by or on behalf of the City and used for public parking by the general public, consistent with the City’s other parking facilities that have been traditionally financed or refinanced with parking facilities revenue bonds issued under the General Bond Ordinance No. 2005-119 (or predecessor bond ordinances thereto) enacted by City Council on November 9, 2005, as amended and supplemented (as so amended and supplemented, the “Parking Bond Ordinance”); and,

WHEREAS, based on estimates and other information previously provided by the Developer, the City anticipates that the costs to acquire, construct, equip and develop the Project, including land acquisition costs and contingency (if any), will be approximately \$20,400,000 (the “Project Costs”), and that it would be unable to finance such Project Costs with parking facilities revenue bonds issued under the Parking Bond Ordinance (the “Parking Bonds”), unless significant rate increases across the City’s parking system were implemented; and,

WHEREAS, because the City is obligated to provide Parking Facilities under the Bull Street Development Agreement and the first of the Project Components is needed within the next 18-24 months to satisfy demand for parking, but the City is presently unable to issue Parking Bonds without implementing significant rate increases across its parking system, it is proposed that the City would initially finance the Project Costs with funds previously contributed by the City into one or more funds or accounts which are presently available to be used to fund future healthcare benefits for City retirees (the “City Funds”) to be drawn as described herein, but will repay or replenish the City Funds so drawn from a future issuance of Parking Bonds or available Net Revenues of the Parking Facilities, as such terms are defined in and under the Parking Bond Ordinance; and,

WHEREAS, the City believes that the use of the City Funds for the purposes described above is responsible and prudent for several reasons:

- (1) the City would delay or defer issuing debt and paying associated interest and other financing costs to pay for the Project Costs until the fiscal year ending June 30, 2037 (“Fiscal Year 2037”);
- (2) the City would not burden its parking system by incurring additional debt in the short term and/or the City can avoid significant rate increases across its parking system to permit such debt to be issued;
- (3) the Project’s operations would help the financial condition of the City’s parking system without having to pay the debt service cost for debt issued to construct the Project until Fiscal Year 2037;
- (4) together with the Parking Facility 1, the City would satisfy its commitment to provide all of the Parking Facilities contemplated under the Bull Street Development Agreement;
- (5) the City Funds drawn as described herein will be used to acquire, construct and equip the Project, which are important and much-needed assets to serve a public purpose and are and will remain the property of the City; and
- (6) when the City Funds drawn as described herein are repaid in Fiscal Year 2037, the City will repay or replenish the City Funds initially drawn including a cumulative rate of return thereof equal to 1.5% per annum, which benefits the City’s retirees.

WHEREAS, City Council has authorized and approved, by separate resolution, the execution and delivery by the City of a Parking Facility 2 Development Agreement with the Developer, related to the Project (the “Parking

Facility 2 Development Agreement”), pursuant to which the Developer will agree to develop and construct the Project, and the City will agree to fund the Project Costs; and,

WHEREAS, in order to ensure the development and utilization of the Project pursuant to the Bull Street Development Agreement and the Parking Facility 2 Development Agreement, and to satisfy the City’s commitments thereunder, it is necessary and in the best interests of the City to fund the Project Costs, as herein approved and authorized; and,

WHEREAS, the undertaking authorized by this Ordinance is necessary and in the best interest of the City; NOW, THEREFORE,

BE IT ORDAINED by the Mayor and City Council of the City of Columbia, South Carolina, this 20th day of July, 2021 as follows:

Section 1. Recitals and Authority for Ordinance. It is hereby declared and found that the recitals of this Ordinance set forth herein are in all material respects true and correct.

Section 2. Approval of Funding and Future Repayment or Replenishment. The City Council does hereby approve funding of the Project Costs, and hereby approves the use, from time to time, of the City Funds for the purposes described in this Ordinance, including but not limited to funding of the Project Costs. The Project, once completed, shall constitute a part of the Off-Street Parking Facilities as defined in and for the purposes of the Parking Bond Ordinance.

The City shall repay or replenish the City Funds so drawn for the purposes described in this Ordinance during Fiscal Year 2037, from a series of Parking Bonds issued under the Parking Bond Ordinance or available Net Revenues of the Parking Facilities, as such terms are defined in and under the Parking Bond Ordinance, which repaid or replenished amounts shall consist of the amounts initially drawn to fund the Project Costs and shall include a rate of return equal to 1.5% per annum in order to compensate the City Funds so drawn for the use thereof to fund such Project Costs, taking into account such factors as the length of time until such amounts are repaid, lost opportunity costs and other applicable investment earnings; provided, that (1) nothing herein shall bind any future City Council and (2) the City’s obligation to repay or replenish the City Funds so drawn as described above shall be limited to the sources described above and nothing herein shall create a general obligation or indebtedness of the City or constitute a pledge of the full faith, credit or taxing power of the City therefor.

Section 3. Official Action. This Ordinance shall constitute the City’s declaration of official intent pursuant to Regulation §1.150-2 of the Internal Revenue Code of 1986, as amended (the “Code”) to reimburse the City from a portion of the proceeds of the Parking Bonds (if issued as tax-exempt obligations) or other tax-exempt bonds issued by or on behalf of the City, if any, for such purposes (the “Reimbursement Bonds”) for expenditures it anticipates incurring (the “Expenditures”) with respect to the Project prior to the issuance of the Reimbursement Bonds; provided, however, that nothing herein shall commit the City to issue the Reimbursement Bonds (or any portion thereof) in the future. The Expenditures which are reimbursed are limited to Expenditures which are: (1) properly chargeable to a capital account (or would be so chargeable with a proper election or with the application of the definition of placed in service under Regulation §1.150-2 of the Code) under general federal income tax principles; or (2) certain *de minimis* or preliminary expenditures satisfying the requirements of Regulation §1.150-2(f) of the Code. As described above, the source of funds for the Expenditures with respect to the Project would be the City Funds. To be eligible for reimbursement of the Expenditures, the reimbursement allocation must be made not later than 18 months after the later of (a) the date on which the Expenditures were paid; or (b) the date such project was placed in service, but in no event more than three (3) years after the original Expenditures.


Section 4. Authorization. The City Manager, for and on behalf of the City, is fully empowered and authorized to take such further action and to execute and deliver such additional documents as may be necessary to effect the transaction contemplated hereby, and the action of such officer in executing and delivering any necessary documents, in such form as the City Manager shall approve, is hereby fully authorized.

Section 5. 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 6. Effective Date of Ordinance. This Ordinance shall take effect and be in full force from and after the date of its enactment.

Requested by:

Mayor and City Council \_\_\_\_\_

  
\_\_\_\_\_  
Mayor


Approved by:

  
\_\_\_\_\_  
City Manager

Approved as to form:

  
\_\_\_\_\_  
City Attorney

ATTEST:

  
\_\_\_\_\_  
City Clerk

Introduced: 6/15/2021  
Final Reading: 7/20/2021