

## ORDINANCE 4373

### AUTHORIZING AND RATIFYING THE CONVEYANCE AND TRANSFER OF CERTAIN REAL PROPERTY; AND OTHER MATTERS RELATING THERETO.

BE IT ORDAINED by the Mayor and City Council of the City of Hartsville in a meeting duly assembled:

#### Section 1. Findings of Fact

The City Council of the City of Hartsville (the “**City Council**”), the governing body of the City of Hartsville, South Carolina (the “**City**”), has made the following findings of fact:

(A) The City is a municipal corporation of the State of South Carolina (the “**State**”) located in Darlington County, South Carolina, and as such possesses all general powers granted by the Constitution and statutes of the State of South Carolina to such public entities.

(B) The Hartsville Public Development Corporation (the “**Corporation**”) is a South Carolina nonprofit corporation, incorporated, organized and existing under the laws of the State of South Carolina.

(C) The Corporation has been formed to assist in the development of public facilities and other projects which benefit the City.

(D) The Corporation is controlled by City Council as two of its three directors are appointed by City Council.

(E) The City has previously acquired certain property as described on Exhibit A attached hereto (the “**New Parcel**”).

(F) The Corporation, acting in concert with the City, has stated its intent to develop or arrange for the development of a mixed-use commercial and residential development, currently known as the “Canalside Project”, which is intended to benefit the City by further developing and improving its downtown corridor and adding multi-family housing options and commercial development, which are needed in the City (“**Project**”).

(G) The City believes that the development of the Project will serve as a catalyst to further interest, investment and development of Canalside as well as increased tourism, quality of life enhancement and community vitality. As such, the City seeks to incentivize the Project as it deems appropriate.

(H) By the terms of its Articles of Incorporation and its Bylaws, the Corporation is authorized “to acquire, by gift, lease or purchase...any property, real or tangible personal, incidental to carrying out” projects located in and for the benefit of the City.”

(I) The City is authorized by the laws of the State to sell, alien, convey, lease or otherwise dispose of real property.

(J) The City, under the terms of Ordinance 4325 dated March 13, 2018 and Ordinance 4360 dated March 12, 2029 (together, the “**Ordinances**”), has previously authorized the transfer of the City Parcels, the Other Parcels and the Parcels (as each such term is defined in Ordinances). The City Parcels, the Other Parcels and the Parcels were determined by the City Council to benefit the Project.

(K) By the terms of this Ordinance and similar to the provisions of Ordinances, the City intends to convey the New Parcel to the Corporation. In making such conveyance, the City is cognizant that its authority to dispose of real property is limited by a fiduciary duty to act in the best interest of the public.<sup>1</sup> The City has a fiduciary duty to receive consideration of “reasonably equivalent value” in exchange for its sale or conveyance of real property.<sup>2</sup> In determining what constitutes “reasonably equivalent value,” a municipality is not limited to considering the monetary value received for the property but may also “consider indirect benefits resulting to the public in determining what is a fair and reasonable return for disposition of its properties....”<sup>3</sup>

(L) The City is mindful of and has considered the requirements of *Nichols v. South Carolina Research Authority*, 290 S.C. 415, 351 S.E.2d 155 (1986) and *WDW Properties v. City of Sumter*, 342 S.C. 6, 535 S.E.2d 631 (2000) (the “**Byrd Test**”), wherein public purpose of the proposed incentives is determined by the following four-part test: (1) what is the ultimate goal or benefit to the public intended by the project; (2) are public parties or private parties the primary beneficiaries; (3) is the benefit to the public speculative; and (4) what is the probability that public interest shall be served and to what degree.

(M) The City Council is enacting this Ordinance in order to:

(1) authorize the conveyance of the New Parcel by grant (or a substantially below-market sale) to the Corporation;

(2) ratify and approve of the conveyance of the New Parcel by grant (or a substantially below-market sale) to the Corporation in the event that such transfer may have been executed prior to the enactment of this Ordinance;

(3) to confirm its support for the Project; and

(4) authorize the execution and delivery by, and on behalf of, the City of such other agreements and certificates and the taking of such other action by the City (acting through the City Manager) as shall be necessary or desirable in connection with the conveyance of the New Parcel.

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<sup>1</sup> *Haesloop v. City Council of Charleston*, 115 S.E. 596, 600 (S.C. 1923).

<sup>2</sup> *Id.*

<sup>3</sup> Quoting *McKinney v. City of Greenville*, 203 S.E.2d 680, 688 (S.C. 1974).

Section 2. Ratification of the Byrd Test; Recital of Indirect Benefits

(A) The City reaffirms the criteria set forth by the South Carolina Supreme Court when it established the Byrd Test. The City, in conveying the New Parcel to the Corporation, understands and affirms that the Corporation plans to use the New Parcel, as well as the City Parcels, the Other Parcels and the Parcels, as an incentive for the development of the Project; for these reasons, of the City's conveyance of the New Parcel complies with the objective provisions of Byrd Test as described in Section 2(B).

(B) With regard to the Byrd Test recited above, the City believes that:

(1) the development of the Project is integral to City's redevelopment efforts and the Project shall serve as a catalyst for future redevelopment in the area; further, there is a significant amount of excitement and anticipation throughout the City in support of the Project;

(2) although some benefits inure to the Corporation, the City is the primary beneficiary because the Project shall provide a direct economic impact to the City through increased taxes, growth in property valuations, and the creation of jobs, and shall provide indirect economic impacts by attracting businesses, investment and patronage into the area and enhancing quality of life and enjoyment for City residents by developing blighted or vacant areas in the community, increasing property tax revenues within the areas surrounding the Project and increased demand in property and property values in the vicinity of the Project;

(3) while the Project is still in its introductory phase, the Corporation's state corporate purpose is to serve the City's best-interests and through the City Council's control of the Corporation it can ensure that the Project is developed in a manner best benefitting the City; and

(4) the public interest shall be greatly served, as the Project is expected to generate investment within the City and potentially create jobs. The direct investment of capital and the potential creation of jobs are beneficial to the success of the City and its general welfare.

Section 3. Authorization to Convey Property; Property Maintenance Agreement

A. In order to incentivize and induce the success of the Project, the City may convey the New Parcel by grant, sale or otherwise to the Corporation; in the event of a sale, the amount of the sale may be for an amount less than the appraised value of any the New Parcel and the specific sales price may be determined by the City Manager based on her estimate of best value at the time of conveyance.

B. To the extent any of the New Parcel has already been transferred or conveyed by the City to the Corporation, such transfer or conveyance, whether it was processed by grant, sale or otherwise, is ratified, approved and confirmed.

C. The consummation of the transactions and undertakings described in this Ordinance, and such additional transactions and undertakings as may be determined by the City Manager, in consultation with legal counsel to be necessary or advisable in connection therewith, are hereby approved.

D. The New Parcel shall be added to and included with the City Parcels, Other Parcels, Parcels and any other property now owned by the Corporation, all of which shall be subject to the terms of that certain Property Maintenance Agreement between the City and the Corporation dated April 19, 2018, as amended.

#### Section 4. Other Documents; Ratification of Prior Actions

In connection with the execution and delivery of the conveyance documents, the City Manager is additionally authorized to prepare, review, negotiate, execute, deliver, and agree to such additional agreements, certifications, documents, closing proofs, and undertakings as she shall deem necessary or advisable. Any actions previously undertaken by the City Manager, City Council or City staff in connection with the conveyance of the New Parcel prior to the enactment of this Ordinance are ratified and confirmed.

#### Section 5. Severability

If any one or more of the provisions of this Ordinance should be contrary to law, then such provision shall be deemed severable from the remaining provisions, and shall in no way affect the validity of the other provisions of this Ordinance.

#### Section 6. Repealer

Nothing in this Ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired or liability incurred, or any cause of action acquired or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

#### Section 7. Inconsistency

All ordinances, resolutions or parts of any ordinances or resolutions inconsistent or in conflict with the provisions of this Ordinance are hereby repealed to the extent of the conflict or inconsistency.

#### Section 8. Effect

This Ordinance shall be enacted upon final reading by the City Council.

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**ORDAINED AND ENACTED** in City Council Meeting duly advertised and assembled  
this \_\_th day of \_\_\_\_\_, 2019.

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Carl M. (Mel) Pennington IV, Mayor

[SEAL]

ATTEST:

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Sherron L. Skipper, City Clerk

First Reading:       September 10, 2019  
Public Hearing:       \_\_\_\_\_, 2019  
Final Reading:       \_\_\_\_\_, 2019

**Exhibit A**

**Description of New Parcel**

056-06-02-104