

**ORDINANCE NO.: 2011-069**

**AUTHORIZING THE EXECUTION AND DELIVERY OF AN ECONOMIC DEVELOPMENT  
INFRASTRUCTURE AGREEMENT RELATING TO CERTAIN PUBLIC INFRASTRUCTURE  
TO BE CONSTRUCTED IN THE SHOP GROVE COMMERCE PARK; AND OTHER  
MATTERS RELATING THERETO**

The City Council ("City Council") of the City of Columbia, South Carolina (the "City"), hereby finds and determines:

(a) The City is an incorporated municipality located in Richland County, South Carolina and Lexington County, South Carolina, and as such possesses all powers granted to municipalities by the Constitution and general laws of the State of South Carolina.

(b) Pursuant to Section 5-5-10, Code of Laws of South Carolina, 1976, as amended (the "S.C. 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) Shop Road Holdings, LLC (the "Company") has represented to officials of the City that it intends to develop an industrial park to be identified as the "Shop Grove Commerce Park" to be located on the parcel of property within the City limits currently identified as Richland County Tax Map No. 16200-04-18 (the "Industrial Park").

(d) The development of the Industrial Park is anticipated to result in the recruitment of significant capital investment and job creation for the City including, but not limited to, one or more projects known to the Company and the City as "Project Blue" which, in the aggregate, is anticipated to result in capital investment of more than \$20,000,000 and the creation of a significant number of new jobs.

(e) It is anticipated that the development of the Industrial Park will benefit the City through, among other things, increasing and diversifying the industrial and tax base of the City, increasing the market values of property located in and around the Industrial Park, increasing tax or fee revenues attributable to the Industrial Park, encouraging development in other phases of the Industrial Park, the creation of jobs, the utilization and promotion of surrounding resources, the attraction of further capital investment, increasing revenues of the City's Waterworks and Sewer System (the "System"), and increasing the customer base of the System.

(f) Certain public infrastructure (the "Park Infrastructure") will be designed, acquired and/or constructed in the Industrial Park in order to facilitate the development of the Park and to induce Project Blue to locate in phase one of the Industrial Park. The costs of the Park Infrastructure will be defrayed with revenues of the City's System as described in Section 1 of this Ordinance.

(g) The City Council recognizes that the expenditure of public funds for economic development must be for a public purpose in accordance with the applicable provisions of the South Carolina Constitution and decisions of the South Carolina Supreme court. Specifically, the cases of Byrd v. County of Florence, 315 S.E.2d 804 (S.C. 1984) and Nichols v. The South Carolina Research Authority, 351, S.E.2d 155 (S.C. 1986), formulate a four-point standard by which undertakings for financing economic development are tested for constitutionality. The City Council finds that this economic development project meets all four points of the test.

(h) In order to further the development of the Industrial Park, and to promote and enhance the economic development within the City and surrounding areas, and in consideration of the direct and indirect benefits, some of which are set forth herein, afforded to the City by the development of the Industrial Park, it is necessary and in the best interests of the City to undertake the design, acquisition and/or construction of the Park Infrastructure herein approved and authorized. The design, acquisition and/or construction of the Park Infrastructure will be undertaken for a public purpose of the City.

(i) The City and the Company have caused to be prepared an Economic Development Infrastructure Agreement (the "Agreement"), the form of which is attached hereto as Exhibit A, relating to the costs of designing, acquiring and constructing the Park Infrastructure.

(j) It appears that the Agreement, the form of which attached hereto as Exhibit A, is in appropriate form and is an appropriate instrument to be executed and delivered by the City for the purposes intended.

NOW THEREFORE,

BE IT ORDAINED by the Mayor and City Council of the City of Columbia, South Carolina this 20<sup>th</sup> day of September, 2011, as follows:

Section 1. Park Infrastructure; Approval of Agreement. On the basis of the benefits (both direct and indirect) that the Park Infrastructure will confer upon the Industrial Park and the economic development of the City, the City Council does hereby approve the utilization of revenues of the City's System in the amount of not exceeding \$1,200,000 to defray the costs of the Park Infrastructure, subject to the conditions, procedures and provisions set forth in the Agreement. In furtherance thereof, the form of Agreement attached hereto as Exhibit A is hereby approved, and the City Manager is hereby authorized to execute and deliver the Agreement in substantially the form hereby approved, together with such additions, modifications and changes as may be approved, upon the advice of counsel, with such approval being evidenced by the execution and delivery thereof. Funds to pay the costs of such Park Infrastructure shall be derived from revenues of the City's System remaining after payment of all expenses related to the operation and maintenance of the System, all amounts (when due) on and relating to Bonds, Junior Bonds (as defined in General Bond Ordinance No. 93-43, enacted by the City Council of the City on May 21, 1993, as amended (the "Bond Ordinance")) or any other obligations of the City which are or shall become charges, liens or encumbrances upon the System's revenues, and all amounts set aside to provide adequate funds for improvements to the System and to build up proper reserves for depreciation and against contingencies, all as permitted by Section 6.7 of the Bond Ordinance.

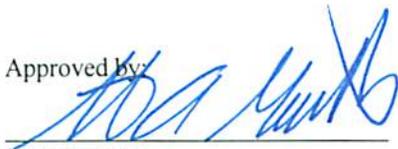
Section 2. Further Authorization. The City Manager is authorized to execute any documents and take any further actions as may be reasonably necessary to further the intent of this Ordinance.

Requested by:

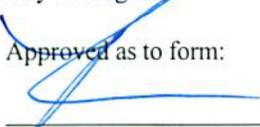
Steven A. Gantt, City Manager

  
\_\_\_\_\_  
Mayor

Approved by:

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

Approved as to form:

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

ATTEST:  
  
\_\_\_\_\_  
City Clerk

Introduced  
Final Reading

**Exhibit A**

**Economic Development Infrastructure Agreement**

**ECONOMIC DEVELOPMENT INFRASTRUCTURE AGREEMENT**

**RELATING TO THE DESIGN, ACQUISITION AND CONSTRUCTION OF  
CERTAIN CITY-OWNED INFRASTRUCTURE TO BE LOCATED IN THE  
SHOP GROVE COMMERCE PARK**

THIS ECONOMIC DEVELOPMENT INFRASTRUCTURE AGREEMENT (the "Agreement") is made and entered into as of this 22<sup>nd</sup> day of September, 2011, by and between the City of Columbia, South Carolina (the "City"), a body politic and corporate of the State of South Carolina, and Shop Road Holdings, LLC, a South Carolina limited liability company (the "Company").

**WITNESSETH:**

WHEREAS, the Company has represented to the City that it intends to develop an industrial park to be identified as the "Shop Grove Commerce Park" to be located on the parcel of property within the City limits currently identified as Richland County Tax Map No. 16200-04-18 (the "Park"); and

WHEREAS, the development of the Park is anticipated to result in the recruitment of significant capital investment and job creation for the City including, but not limited to, a project known to the Company and the City as "Project Blue" which is anticipated to result in a capital investment of more than \$20,000,000 and the creation of a significant number of new jobs; and

WHEREAS, it is anticipated that the development of the Park will benefit the City through, among other things, significantly increasing the tax base of the City, positively influencing the values of property located in the Park and surrounding areas, increasing tax or fee revenues attributable to the Park, encouraging development in surrounding areas, the creation of jobs, the utilization and promotion of surrounding resources, and the attraction of further capital investment; and

WHEREAS, in order to develop the Park, it is necessary for certain City-owned infrastructure (the "Park Infrastructure") to be designed, acquired and/or constructed in the Park in order to facilitate the development of the Park and to induce Project Blue to locate in phase one of the Park; and

WHEREAS, the Company has requested that the City provide funds for the design, acquisition and/or construction of the Park Infrastructure; and

WHEREAS, subject to the limitations and conditions set forth in this Agreement, the City agrees to provide a limited amount of funding for the cost of the design, acquisition and construction of the Park Infrastructure.

NOW, THEREFORE, in consideration of the mutual agreements between the parties as set forth herein and other good and valuable consideration, the parties hereto do hereby agree as follows:

## ARTICLE I

### FUNDING FOR PARK INFRASTRUCTURE

1.01 Park Infrastructure Costs. A listing of the Park Infrastructure and their anticipated costs (including the costs associated with the designing, acquisition and/or construction of such Park Infrastructure) is attached hereto as Exhibit A.

1.02 City Infrastructure Funds. Subject to the provisions and conditions of this Agreement, the City shall pay for a portion of the costs of the Park Infrastructure in an amount not to exceed \$1,200,000 (the "City Infrastructure Funds") from any source legally available to the City, including, but not limited to, revenues of the City's Waterworks and Sewer System (the "System") remaining after payment of all expenses related to the operation and maintenance of the System, all amounts (when due) on and relating to Bonds, Junior Bonds (as defined in General Bond Ordinance No. 93-43, enacted by the City Council of the City on May 21, 1993, as amended (the "Bond Ordinance")) or any other obligations of the City which are or shall become charges, liens or encumbrances upon the System's revenues, and all amounts set aside to provide adequate funds for improvements to the System and to build up proper reserves for depreciation and against contingencies, all as permitted by Section 6.7 of the Bond Ordinance. For purposes of Section 6.7 of the Bond Ordinance, the City Council of the City has determined that the use of City Infrastructure Funds for the Park Infrastructure is in the best interest of the City.

1.03 Project Funding. City Infrastructure Funds for the Park Infrastructure will be available for disbursement subject to the conditions precedent as set forth in sections 1.04 through 1.07 hereof.

1.04 Conditions Precedent to Disbursement. The City shall not be obligated to make any disbursement of City Infrastructure Funds until all of the following conditions have been satisfied by proper evidence, execution, and/or delivery to the City by the Company of the following items, all in form and substance satisfactory to the City, in the City's sole discretion:

(a) A copy of the executed contract for the sale of a portion of phase one of the Park to Project Blue (the "Project Blue Parcel").

(b) Evidence satisfactory to the City evidencing the closing of the purchase of the Project Blue Parcel pursuant to the contract of sale identified in Section 1.04(a) above, and transfer of title of such Project Blue Parcel to Project Blue.

(c) A copy of the executed contract or contracts for the site work and improvements in connection with the Project Blue Parcel to be located in the Park.

(d) A survey and a site plan of the Park, in each case prepared by a registered land surveyor and/or a civil engineer, as applicable, which shall show the location of all proposed Park Infrastructure and all physical conditions affecting the title and use of the land including, without limitation, location of roads and rights-of-way, boundary lines between tracts and parcels, and set-back lines. Any revision made to the site plan shall require the City's written approval.

(e) Evidence satisfactory to the City that the City shall not be liable, or otherwise responsible, for environmental liability arising out of ownership or operation of the Park Infrastructure.

In furtherance of this requirement, the Company shall provide the City with copies of all environmental reports or assessments undertaken with respect to the Park.

(f) One set of the construction plans (the "Construction Plans") for the Park Infrastructure, to be approved by the City, with sufficient detail, including, where applicable, indication of the commencement and ending of construction intervals or phases, to the City so the City, through its designated agent, can review and approve the Construction Plans as complying with all City requirements, including, without limitation, all City policies and procedures, prior to commencement of construction.

(g) One copy of any construction contracts and architects contracts related to the Park executed by the Company and any contractor or architect, and copies of all other executed contracts related to the Park as may be reasonably required by the City (the "Construction Documents").

(h) A detailed breakdown of the cost of constructing the Park Infrastructure (the "Construction Budget") and a funding schedule for all items.

(i) A detailed schedule of the dates by which construction of portions of the Park Infrastructure is anticipated to be completed (the "Construction Schedule").

(j) Completion of a satisfactory site inspection by the City.

(k) Satisfactory evidence that the contemplated development of the Park and construction of the Park Infrastructure is or will be in compliance with all applicable building codes, zoning ordinances and other rules and regulations promulgated by the City or any other applicable regulatory or governmental authority (collectively, the "Infrastructure Regulations"), including evidence that all required permits have been procured in order to construct, acquire and complete the Park Infrastructure.

(l) No Default (as defined in Section 3.01) shall have occurred and be continuing.

(m) Satisfactory evidence that the Company has procured (at its expense) all permits required by any government or agency, including the City, in order to commence the acquisition or construction of, or complete, as applicable, the Park Infrastructure.

(n) Receipt by the City of other approvals, opinions, or documents as the City may reasonably request.

1.05 Conditions Precedent to Disbursements After Initial Disbursement. The City shall not be obligated to make any disbursements from City Infrastructure Funds after the initial disbursement until all of the following conditions have been satisfied, all in form and substance satisfactory to the City in its sole discretion:

(a) Each and every one of the conditions stated in Section 1.04 shall be and continue to be satisfied.

(b) No lien, security interest, or other encumbrance shall have been permitted to attach to the Park Infrastructure except taxes for the current year and others specifically approved by the City, and the City shall have received all released and waivers of liens from the general contractor or subcontractors as may be required by the City.

(c) Construction of the portions of the Park Infrastructure related to such disbursements shall have been in accordance with the Construction Plans, in a good and workmanlike manner, and in accordance with all Infrastructure Regulations, and the Park Infrastructure shall not have been materially damaged, in the City's opinion, by fire, storm or otherwise.

(d) All change orders or other material changes in the construction of the Park Infrastructure which differ from the Construction Plans have been approved by the City.

(e) The City is satisfied with the progress of construction, and in the opinion of the City, the estimated remaining cost of the construction of the Park Infrastructure does not exceed the sum of: (1) the remaining unadvanced balance of the City Infrastructure Funds, and (2) other financial resources immediately available to the Company.

1.06 Conditions Precedent to Final Disbursement. The City shall not be obligated to make the final disbursement from the City Infrastructure Funds until all of the following conditions have been satisfied, all in form and substance satisfactory to the City in its sole discretion:

(a) Each and every one of the conditions stated in Sections 1.04 and 1.05 shall be and continue to be satisfied.

(b) All of the Park Infrastructure has been fully completed in a good and workmanlike manner and in accordance with the Construction Plans and all Infrastructure Regulations, and the Park Infrastructure has passed inspection by the City, including through its agents.

(c) If required by the City, an "as built" survey showing the Park Infrastructure's location in the Park.

1.07 Further Requirements and Provisions. Disbursement of City Infrastructure Funds shall be further subject to the following conditions:

(a) If the actual costs of the Park Infrastructure (the "Infrastructure Costs") which are eligible for payment or reimbursement hereunder are less than the City Infrastructure Funds, then the City shall only be required to pay to third parties or reimburse the Company for such lesser amount of eligible Infrastructure Costs. No City Infrastructure Funds may be used to pay management or development fees of the Company or any other party. Excess City Infrastructure Funds may be used or transferred by the City for any legally permissible purpose as determined from time to time by the City.

(b) If the Infrastructure Costs exceed the City Infrastructure Funds, the Company shall complete the construction of the Park Infrastructure utilizing its own funds. The Company shall be obligated to complete the Park Infrastructure identified in Exhibit A attached hereto regardless of whether the City Infrastructure Funds are sufficient therefor.

(c) The Company or its designee may make periodic (but no more often than monthly) requests to the City or its designee for disbursement of City Infrastructure Funds for payment of Infrastructure Costs to the Company's contractor(s) which are constructing the Park Infrastructure, or as reimbursement to the Company for such Infrastructure Costs.

(d) As part of any disbursement request to the City, the Company or third parties shall deliver to the City or its designee: (1) a description of those specific Park Infrastructure for which the Company is seeking disbursement (either directly to a third party, or as reimbursement to the Company); (2) evidence that the Company has paid the costs for which reimbursement is being sought, or that third parties are due the amounts requested (e.g., invoices); (3) if applicable, certificates showing the absence of material, mechanics' and other liens with respect to the Park Infrastructure to be paid such City Infrastructure Funds; and (4) if applicable, certificates from the architect or engineer for the Park Infrastructure that the work included in the disbursement request is consistent with the plans and specifications and governmental permits and approvals for the work. The City shall have the right, in its sole discretion, to determine whether the applicable Park Infrastructure has been acquired or constructed in compliance with the Infrastructure Regulations and the provisions of this Agreement.

(e) Each item of Park Infrastructure shall be built to the standard of all Infrastructure Regulations. Disbursement of City Infrastructure Funds to pay for Park Infrastructure is subject to inspection and approval of such Park Infrastructure by officials of the City.

(f) All Park Infrastructure shall be City-owned and, within 30 days of the completion of construction thereof, such Park Infrastructure shall be deeded to the City, free and clear of all liens and encumbrances, by general warranty deed. In connection with the conveyance or transfer of Park Infrastructure to the City, all related easements required by any Infrastructure Regulations (such as easements for access, repairs or maintenance) shall be contemporaneously granted to the City. In the event the Company conveys or transfers property in the Park to any third parties (including, but not limited to, Project Blue), the Company shall either (1) convey to the City such property as may be necessary to access, operate and maintain such Park Infrastructure, or (2) reserve therefrom and grant to the City such easements as may be necessary for the City to access, operate and maintain such Park Infrastructure in each case in order to comply with the Infrastructure Regulations.

(g) If the Company starts but fails to complete an item of Park Infrastructure within a reasonable time period after commencement of construction (except delays due to Force Majeure (as defined below)), the City, in addition to any other rights and remedies which may be available at law, may, in its sole and exclusive discretion, use any of the remaining limited City Infrastructure Funds to complete the Park Infrastructure and, in such event, shall reduce the amount of City Infrastructure Funds which would otherwise be made available to the Company necessary to complete the applicable Park Infrastructure. Upon exercise by the City of its rights to remedy or complete an item of the Park Infrastructure, the Company agrees that it shall make any further assignments to the City of any construction contracts, professional services contracts (e.g., architectural, engineer or prime contractors), any rights to use plans, drawings and specifications, any governmental permits or approvals for such Park Infrastructure as may be necessary for the City to complete such Park Infrastructure, and shall transfer any right or interest the Company has in the Park Infrastructure to the City, including, without limitation, delivery of a deed granting fee simple title to the right-of-way for such Park Infrastructure. The term "Force Majeure", as used herein, shall mean: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies or terrorism; orders or restraints of any kind of the government of the United States of America or of the State of South Carolina or any of their departments, agencies or officials of any civil or military authority; insurrection; riots; landslides; earthquakes; flood; fire; storms; droughts; explosion; breakage or accidents to machinery, transmission pipes or canals; or any other cause or event not within the control of the party seeking the benefit of force majeure and not due to its own negligence.

(h) To the extent any of the items of Park Infrastructure are to be operated and maintained by the Company after conveyance or transfer of such Park Infrastructure to the City, the City and the Company shall negotiate one or more subsequent agreements relating to such operation and maintenance. Any such agreements relating to operation and maintenance must indemnify and hold the City harmless against all costs, liability or loss associated with such operation and maintenance; and, must provide adequate safeguards and assurances to the City that the City will be protected against future costs and liabilities associated with such operation and maintenance by the City.

(i) All contracts and agreements to be funded from City Infrastructure Funds shall be subject to reasonable review, audit and approval by the City. Such contracts and agreements shall provide a definite scope and fees for all work to be performed.

## ARTICLE II

### UNDERTAKINGS BY THE COMPANY

2.01 Design and Construction of Park Infrastructure. The Company will be responsible for and arrange for the design and construction of the Park Infrastructure, all in a manner in keeping with good real estate development and operating practices, as determined by the City (or its designee) in its sole discretion.

2.02 Development Obligations. The Company shall cause the Park Infrastructure to be developed substantially as described in this Agreement, with construction of the Park Infrastructure to commence on or before October 15, 2011. The Company shall diligently pursue completion of the Park Infrastructure. Construction and development of the Park Infrastructure, and conveyance or transfer thereof to the City, must be completed on or before June 1, 2012.

2.03 Approvals. In addition to the approval and consent rights of the City contained elsewhere in this Agreement, the following items shall be subject to the approval of the County:

- (a) The Construction Plans,
- (b) The Construction Documents,
- (c) The Construction Budget;
- (d) The Construction Schedule; and
- (e) Any modifications to the foregoing after initial approval thereof by the City.

2.05 Construction Matters. The Park Infrastructure shall be constructed in accordance with the Construction Documents, and the Construction Documents shall contain guaranteed maximum prices for the Park Infrastructure that are consistent with the Construction Budget. The Park Infrastructure shall be constructed in compliance with the Infrastructure Regulations. The Company shall notify the City prior to the commencement of any construction of the Park Infrastructure, and the Company shall give progress reports and inspection reports as specified by the City.

## ARTICLE III

### MISCELLANEOUS

3.01 Binding Nature of Agreement; Default. This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the City, the Company, and their respective successors. Any failure by either party hereto on any obligation under this Agreement shall constitute a "Default"

under this Agreement. Upon the occurrence of a Default, any aggrieved party shall notify the defaulting party that it has thirty (30) days after receipt of notice of Default within which to cure the Default to the satisfaction of the aggrieved party providing such notice. The City agrees that the developer of Project Blue, Baseline Development, LLC ("Baseline"), shall have the right to cure any default of the Company for a period of thirty (30) days after the City provides Baseline notice of such default. Upon failure to remedy such Default, any aggrieved party shall have the right to any remedy provided in law, equity or provided elsewhere in this Agreement. In the event of a Default by the Company under this Agreement, and the Company fails to remedy such Default as provided herein, the City shall have no further obligation to the Company under this Agreement, no further City Infrastructure Funds shall be disbursed to the Company, the City may in its sole and exclusive discretion, use any of the remaining limited City Infrastructure Funds to complete the Park Infrastructure, and the Company shall immediately make any further assignments to the City of any construction contracts, professional services contracts (e.g., architectural, engineer, or prime contractors), any rights to use plans, drawings, and specifications, any governmental permits or approvals for such Park Infrastructure as may be necessary for the City to complete such Park Infrastructure, and shall transfer any right or interest the Company has in the Park Infrastructure to the City, including, without limitation, delivery of a deed granting fee simple title to the right-of-way for such Park Infrastructure, and the Company shall immediately reimburse the City for any City Infrastructure Funds previously disbursed by the City for Park Infrastructure.

3.02 No Personal Liability. No obligation or agreement contained herein shall be deemed to be an obligation or agreement of any present or future member, elected official, officer, agent or employee of the City or the Company in any other than his or her official capacity, and neither the members of the City Council, nor any official executing this Agreement shall be personally liable thereon or be subject to any personal liability or accountability by reason of the obligations or agreements of the City or the Company contained in this Agreement.

3.03 Approvals, Consents, Notices and Other Actions. No approvals, consents, notices and other similar actions required by this Agreement shall be deemed given unless and until reduced to writing. For purposes of providing any approvals, consents, notices and other similar actions required by this Agreement, such actions may be taken on behalf of the City by the City Manager, and may be taken on behalf of the Company by the president or other chief executive officer of the Company.

3.04 Indemnification. The Company agrees to indemnify, hold harmless and protect the City, the City Council members, agents, representatives, attorneys, and employees from and against any and all damages, whether to property or persons, claims, losses, penalties, liabilities, costs and expenses, including reasonable attorney fees, consultant fees, laboratory fees, expert witness fees, and court costs, that (a) are caused in whole or in part as a result of or due to any negligent act, willful or intentional act, error or omission of the Company, its agents, consultants, employees or representatives, or (b) arise due to any environmental condition on or affecting the Park property or on or affecting any other property impacted by any environmental condition on or affecting the Park property. Notwithstanding any other provision of this Agreement to the contrary, the provisions of this Section 3.04 shall survive the completion of the disbursement of the City Infrastructure Funds, the completion and conveyance of the Park Infrastructure, or the earlier termination of this Agreement.

3.05 Amendments; Complete Agreement. This Agreement may not be amended, changed, modified, altered or terminated, except in accordance with the express provisions of this Agreement or with the written consent of the parties hereto. Except as otherwise incorporated into this Agreement, this Agreement constitutes the entire agreement between the parties and supersedes all agreements, representations, warranties, statements, promises and understandings, whether oral or written, with

respect to the subject matter hereof, and no party hereto shall be bound by any oral or written agreements, statements, promises, or understandings not specifically set forth in this Agreement.

3.06 Sections; Headings. The sections, headings and other titles to paragraphs of this Agreement are inserted solely for the convenience of reference. None shall in any way define, limit, extend or aid in the construction of the scope, extent, meaning or intent of this Agreement.

3.07 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

3.08 No Construction Against Drafter. The parties hereby acknowledge that they have reviewed this Agreement and concur that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of any provision of this Agreement.

3.09 Inconsistent Terms. To the extent that any Infrastructure Regulations are inconsistent with the terms of this Agreement, the Infrastructure Regulations will prevail.

3.10 Time is of the Essence. The parties hereto specifically agree that time is of the essence to this Agreement with respect to the performance of the obligation of the parties under this Agreement.

3.11 Severability. If any provision of this Agreement or any obligation or agreement contained herein is determined by a court of competent jurisdiction to be invalid or unenforceable, that determination shall not affect any other provision, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, obligation, or agreement shall be deemed to be effective, operative, made, entered into, or taken in the manner and to the fullest extent permitted by law.

3.12 Cooperation; No Joint Venture. The City and the Company shall act in a good faith, commercially reasonable manner to address all matters related to the development, financing, construction, ownership and operation of the Park and the Park Infrastructure as contemplated by this Agreement. The City shall not be obligated to provide any funds in excess of the City Infrastructure Funds set forth in this Agreement, nor shall the City be obligated, in any regard, except as specifically agreed to herein, nor shall the City be deemed the owner, constructively or otherwise, of any part, portion, or interest of or in the Park except as specifically agreed to herein. Specifically, but without limitation, the City shall never be construed to be in the chain of title for any part, portion, or interest of the Park, except as specifically set forth and agreed to herein. The parties hereby agree that nothing in this Agreement shall be deemed to place the City and the Company in the relationship of employer/employee, partners, or joint venturers. No party shall have the right to obligate or bind the other in any manner. Each party agrees and acknowledges that it will not hold itself out as an authorized agent with the power to bind the other party in any manner.

3.13 Notices. Unless otherwise specifically provided in this Agreement or by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either party to this Agreement or Baseline (as applicable) shall be in writing and shall be deemed duly served, given, delivered and received when personally delivered (including confirmed overnight delivery service to the party to whom it is directed), or in lieu of such personal delivery, when three (3) business days have elapsed following deposit thereof in the United States mail, first-class postage prepaid, certified, return receipt requested, addressed to:

To the City: City of Columbia, South Carolina  
Attn: City Manager  
Post Office Box 147  
Columbia, South Carolina 29217

To the Company: Shop Road Holdings, LLC  
Attn: Benjamin E. Brantley  
P. O. Box 1837  
Columbia, South Carolina 29202

To Baseline: Baseline Development, LLC  
Attn: Ralph Ronalter  
115 West New York Ave, Suite 200  
Southern Pines, N.C. 28387

Either party may change its address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph. Baseline may change its address for purpose of this paragraph by giving written notice of such change to both of the parties to this Agreement in the manner provided in this paragraph.

3.14 Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any person, other than the parties hereto, any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

3.15 Governing Law. This Agreement shall be governed by the laws of the State of South Carolina.

3.16 Successors and Assigns. All rights and privileges, obligations and liabilities created by this Agreement shall inure to the benefit of, and be binding upon the heirs, designees, administrators, executors, successors and assigns of the parties hereto; provided, however, the rights and privileges, obligations and liabilities of the Company under this Agreement may not be sold, assigned, transferred, or inure to any assignee of or successor to the Company without the prior written consent of the City, which shall not be unreasonably withheld.

IN WITNESS WHEREOF, Shop Road Holdings, LLC and the City of Columbia, South Carolina have caused this Economic Development Infrastructure Agreement to be executed by their duly authorized officers, all as of the date first above written.

SHOP ROAD HOLDINGS, LLC

By: Ben Bradley  
Print Name: Ben Bradley  
Its: Member

CITY OF COLUMBIA, SOUTH CAROLINA

By: Steven A. Gantt  
Steven A. Gantt  
Its: City Manager

Exhibit A

Park Infrastructure

Item No.	Description	Quantity	Units	Price
<b>1</b>	<b>Demolition</b>			
	Demolition of Structures	1	LS	
	Milling	355	SY	
	Asphalt Removal	519	SY	
	Gravel Removal	831	SY	
	Pipe Removal	500	LF	
<b>2</b>	<b>Clearing, grubbing &amp; burn on site</b>	27	AC	
	<b>Rough Grading</b> and other miscellaneous items needed to complete the project according to the plans and specifications			
<b>3</b>		1	LS	
<b>4</b>	<b>Storm Drainage</b>			
	18" RCP	95	LF	
	18" RCP (Class IV)	45	LF	
	24" RCP	616	LF	
	24" RCP (Class IV)	36	LF	
	30" RCP	1,003	LF	
	36" RCP	36	LF	
	42" RCP	605	LF	
	48" RCP	114	LF	
	Catch Basins	9	EA	
	Junction Boxes	1	EA	
	Outlet Structure	2	EA	
	24" Headwall	1	EA	
	24" Double Headwall	1	EA	
	30" Headwalls	1	EA	
	36" Headwalls	1	EA	
	48" Headwalls	1	EA	
	24" Flared End Sections	4	EA	

<b>5 Sanitary Sewer</b>			
8" PVC (0'-6')	5	LF	
8" PVC (6'-8')	1,354	LF	
8" PVC (8'-10')	544	LF	
8" PVC (10'-12')	185	LF	
8" PVC (12'-14')	55	LF	
8" DIP (8'-10')	100	LF	
8" DIP (10'-12')	267	LF	
8" DIP (12'-14')	33	LF	
Manholes (6'-8')	6	EA	
Manholes (8'-10')	1	EA	
Manholes (12'-14')	1	EA	
6" Service with Cleanout	2	EA	

<b>6 Water Line</b>			
6" DIP	300	LF	
8" DIP	2130	LF	
12" DIP	1,570	LF	
Fire Hydrants	5	EA	

<b>7 Roads</b>			
18" Subgrade	8,150	SY	
10" Aggregate Base Course	4,745	SY	
6" Aggregate Base Course	1,985	SY	
2" Type I Asphalt Binder Course	4,745	SY	
1-1/2" Type I Asphalt Surface Course	4,745	SY	
4" Type B Intermediate Course (Binder)	1,985	SY	
2" Surface (SCDOT ROW)	2,340	SY	
6" Gravel Access Drive for Lot 2	1,390	SY	
Barrier Curb & Gutter	3,055	LF	
4" Utility Conduit	500	LF	
6" Utility Conduit	500	LF	
Street Signs	1	LS	
Stop Signs	1	LS	
Thermoplastic Striping	1	LS	
Reflective Markers	37	EA	
Traffic Control	1	LS	
Traffic Signalization	1	LS	

<b>8 Erosion Control</b>			
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	Silt Fence	4,500	LF
	Inlet Protection	9	EA
	DHEC Inspection Reports	1	LS
	Intermediate Sediment Traps and associated temporary swales	2	EA
	Rip Rap with Filter Fabric	96	SY
	Horseshoe Shaped Berm	2	EA
	Construction Entrance	1	EA
<b>9</b>	<b>Landscaping</b>		
	Landscaping & Irrigation	1	LS
	Bermuda Hydroseeding R.O.W. and pond sides (not bottoms)	110,000	SF
<b>10</b>	<b>As-Builts</b>	1	LS
<b>Total</b>			<b>\$1,199,999.00</b>