

NORTH CAROLINA  
COUNTY OF GUILFORD

PARTICIPATION AGREEMENT  
FOR DESIGN SERVICES FOR  
THE A&Y GREENWAY

This PARTICIPATION AGREEMENT made the \_\_\_\_ day of **October, 2016** by and between the CITY OF GREENSBORO, a North Carolina municipal corporation, hereinafter referred to as the “City” and KOTIS PROPERTIES, INC. hereinafter referred to as the “Company,”

**PROFESSIONAL SERVICES**

WHEREAS, the Company is developing a mixed-use facility; and

WHEREAS, the City is planning the construction of the A&Y Greenway between Benjamin Parkway and Green Valley Road following the Norfolk Southern rail line parallel to Battleground Avenue and the Company’s adjoining property;

WHEREAS, the City has completed a Project Planning Study involving substantial public involvement and feedback and has finalized a functional design for construction of said portion of the A&Y Greenway;

WHEREAS, once the A&Y Greenway is completed, it will greatly facilitate the movement of public vehicular, pedestrian, and bicycle traffic, enhance public convenience and improved public safety;

WHEREAS, the Company desires to design a portion of the A&Y Greenway adjacent to the property as part of its site development as indicated in Exhibit A and hereinafter referred to as “Company’s Work”;

WHEREAS, the City desires the Company to perform design services for the Engineering Design of the A&Y Greenway from Benjamin Parkway to the existing A&Y Greenway north of Markland Drive according to the terms of the Agreement and the documents attached hereto;

WHEREAS, the City has agreed to reimburse the Company for the expense of this work in an amount not to exceed SIX HUNDRED THOUSAND DOLLARS (\$600,000.00), and

NOW, THEREFORE, in consideration of the mutual covenants and promises herein, the parties do mutually contract and agree as follows:

1. The Company agrees to:
  - a. For the portions of the project between Benjamin Parkway and Green Valley Road and also between Cornwallis Drive and the existing A&Y Greenway north of Markland Drive, the Company shall design greenway improvements including engineering and landscaping design plans, specifications, engineer’s cost estimate, and schedule to include greenway, green areas, and affected roadways, intersections, and sidewalks

within the limits of the project. The Company will be responsible for all aspects of design, including surveying, and property mapping. All plans, specifications, and designs are subject to review and approval by the City and shall be in a form acceptable to it.

The design shall be in substantial conformity with the City's final functional design for this section of the Greenway attached by reference as Exhibit A. The Company shall submit a written request documenting any request for significant changes from the functional design.

- b. For the portion of the project between Green Valley Road and Cornwallis Drive, the Company shall further develop conceptual alternatives for the Greenway and proposed intersection crossing treatments only. Construction plan development for this section is considered a non-reimbursable expense.
- c. Obtain written authorization from the City to proceed through each of the following steps as it pertains to the Company's Work:
  - a. 25% Construction Plan Submittal – Includes:
    - Horizontal alignment for all curb lines
    - Proposed centerline vertical alignment with vertical curve data
    - Horizontal centerline alignment with curve information
    - Existing right-of-way and proposed preliminary right-of-way (not including drainage, slope, utility & construction easements)
  - b. 50% Construction Plans – Includes:
    - All existing underground and overhead utilities show in plan view (type, size, owner)
    - Utility poles labeled in plan view
    - Proposed slope lines shown in plan view
    - Proposed underground utilities shown in plan and profile
    - Typical section of roadway
  - c. 75% Construction Plans – Includes:
    - All proposed underground utilities with crossing utilities shown in profile
    - All storm sewer calculations and related drainage map
    - All driveway and side street tie-ins
    - All street taper widths and required superelevation shown in plan
    - All special drainage requirements including flow around radius
    - All proposed top of curb profiles shown in profile
    - All proposed sidewalk with appropriate WCR (adjusted due to conflicts)
    - Landscaping requirements and details
    - All existing property lines and owner information
    - All erosion control
    - Proposed right-of-way and easements (labeled)
    - General notes and special details
    - Cross sections

- d. 100% Construction Plans – Includes:
  - i. All utility conflicts addressed
  - ii. Final contract documents including sealed plan set with cover sheets, special provisions and Engineer's estimate
  - iii. Final property maps for each affected parcel detailing existing and proposed right-of-way and easements

If the Company proceeds without written authorization or acceptance regarding the Company's Work, it does so at its own risk.

- d. Comply with the City's M/WBE Plan in hiring, contracting and performing other acts for the Company's Work, abide by all local, State and Federal laws, regulations and policies relevant to Minority/Women's Business Enterprises and not discriminate on the basis of sex, race, color, religion, national origin, or disability.

Company will endeavor, in good faith, to achieve the goal of 20% MWBE participation on eligible contracts and is committed to providing opportunities to local firms in the design and construction process.

- e. Comply with and, abide by all applicable local, State and Federal laws, regulations and policies relevant to Minority/Women's Business Enterprises and not discriminate on the basis of sex, race, color, religion, national origin, or disability.

## **2. SCHEDULE OF REIMBURSEMENT**

- a. The City will reimburse the Company for the Company's actual design time and material costs in an amount not to exceed \$600,000.00.
- b. Payment by the City shall be made within twenty-five (25) days of the presentation to it by the Company of the related invoices for the Company's Work on a monthly basis, provided all other provisions of this Agreement are met and the City has reviewed and approved the submitted work and have provided written authorization to proceed to the next plan review stage or accepted the 100% submittal.
- c. The City shall review and provide comments within thirty (30) days of each construction plan submittal stage detailed in Section 1C of this contract. The Company shall address comments on the next submittal or provide a detailed response why the comments cannot be addressed. If the Company's response does not resolve the issues, the City shall pay the portion of the related invoice for the City's Work that is not disputed. The parties shall work in good faith to resolve the disputed portion prior to the next submission of an invoice.
- d. The City will not pay for any existing work done, or material costs, prior to execution of this agreement, in full accordance with N.C.G.S. §143-129 and other relevant laws.

### **3. PERMITS REQUIRED**

The Company agrees to obtain all necessary permits, licenses, and approvals and to meet all governmental regulatory requirements, environmental and otherwise. It agrees to comply with all Federal, State and local regulations with regard to these construction activities. All permitting costs shall be considered a cost of the Project and as such reimbursable expenses.

### **4. INDEMNIFICATION**

The Company agrees to hold and save the City, its employees, agents, and representatives harmless from any damage or injury to third persons or property resulting from the Company's sole acts or commissions or from claims for inverse condemnation as a result of the work and agrees to indemnify the City against any loss resulting from claims of such damage, injury or taking including, but not limited to court costs, attorney's fees, and environmental cleanup or damage.

### **5. INDEPENDENT CONTRACTOR**

In the acts of administering and constructing the City's Work and in carrying out the promises made in this Agreement the Company is an independent contractor and the City shall not be responsible for the Company's acts or omissions.

### **6. TAXES**

The Company assumes full responsibility for the payment of all assessments, payroll taxes, or contributions, whether State or Federal, as to its employees engaged in the performance of work under this contract.

### **7. INSURANCE**

During the performance of the services under this Agreement, the Company and its contractors, engineers and soil scientists shall maintain the following insurance, to the extent applicable:

- a. General Liability Insurance, including but not limited to coverage for all premises and non-premises operations, independent contractors, broad form property damage coverage, including explosion, collapse and underground property damage hazards, personal injury liability protection including coverage relating to employment of persons, contractual liability protection, and products and completed operations coverage. This insurance shall provide bodily injury limits of not less than \$1,000,000 for each occurrence and not less than \$2,000,000 in the aggregate, and with property damage limits of not less than \$500,000 for each occurrence and not less than \$500,000 in the aggregate.
- b. Automobile Liability Insurance, covering owned, non-owned, hired vehicles and trailers using in connection with this project. This insurance shall provide bodily

injury and property damages limits of not less than \$1,000,000 combined single limit/aggregate.

- c. Worker's Compensation Insurance in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than \$100,000 for each occurrence. In case any work is subcontracted under this Agreement, the Company shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the subcontractor's employees to be engaged in such work.

## **8. PUBLIC PURPOSE**

The commitment of the City of Greensboro to expend the described funds on the construction is based on the factors recited in the Preamble of this Agreement by which the Project will provide a public benefit to the City and its citizens.

## **9. BINDING EFFECT**

This Agreement shall be binding on the assignees and successors in interest of the parties hereto.

## **10. CANCELLATION**

This Agreement may be cancelled by either party upon sixty (60) days written notice of such cancellation by either party given to the other party. In the event of cancellation of this Agreement pursuant to this paragraph, any amounts due hereunder shall be paid promptly by the party obligated to make such payment to the other party.

## **11. DISCONTINUE SERVICE AND DELIVER DOCUMENTS**

Upon any termination, the Company shall (1) promptly discontinue all Services affected), and (2) deliver or otherwise make available to City, at no additional cost, all documents, data, drawings, electronic files, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Company in performing this Agreement, whether completed or in process.

## **12. E-VERIFY**

The Contractor certifies that it currently complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and that at all times during the term of this Agreement, it will continue to comply with these requirements. The Contractor also certifies that it will require that all of its subcontractors that perform any work pursuant to this Agreement to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. The terms "Contractor", "Sub-Contractor" and "comply" shall have the same meanings intended by Chapter 160A Section 20.1(b) of the North Carolina

General Statutes. Violation of this section shall be deemed a material breach of this Agreement.

### **13. IRAN DIVESTMENT ACT CERTIFICATION**

As of the date of this Contract/Agreement, the Contractor/Vendor/Consultant/Company certifies that it is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 143-6A-4 and that the Contractor/Vendor/Consultant/Company will not utilize any subcontractor found on the State Treasurer's Final Divestment List. All individuals signing this Contract/Agreement on behalf of the Contractor/Vendor/Consultant/Company certify that they are authorized by the Contractor/Vendor/Consultant/Company to make this certification.

14. Alterations, deletions, and/or additions to the terms and conditions of this Agreement may only be made by the mutual written consent of the parties.
15. Should the Company fail to comply with the terms of this Agreement, the Company, upon actual or constructive notice of the default shall have thirty (30) days to remedy the default. Should the Company fail to remedy the default, the Agreement may be terminated by the City immediately upon the expiration of the thirty (30) days.
16. Should any part of this Agreement be declared unenforceable, all remaining sections remain in force.
17. This Agreement is made under, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of North Carolina. Venue for any legal action resulting from this Agreement shall lie in Guilford County.
18. This Agreement is intended by the parties hereto to be the final expression of their agreements regarding the matters addressed in this Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made.

### **19. NOTICES**

All notices and other communications pursuant to this Agreement shall be in writing and shall be delivered by hand, fax or mail as follows:

To the City:

Adam Fischer, P.E.  
Greensboro Department of Transportation (GDOT)  
P.O. Box 3136  
Greensboro, NC 27402-3136

Fax: 336-412-6171

To the Company:

Kotis Properties, Inc.  
1410 Mill Street, Suite 102  
Greensboro, NC 27408-2105

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Agreement as of the  
day and year first above written.

WITNESS:

**CITY OF GREENSBORO**  
GUILFORD COUNTY, NORTH

CAROLINA

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

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

\_\_\_\_\_  
City Director of Transportation

APPROVAL AS TO FORM

THIS INSTRUMENT HAS BEEN  
PREAUDITED IN THE MANNER  
REQUIRED BY THE LOCAL  
GOVERNMENT BUDGET & FISCAL  
CONTROL ACT

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

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

Kotis Properties, Inc

\_\_\_\_\_  
Attest To:

\_\_\_\_\_  
PRINCIPLE / PRESIDENT TITLE

NOTARY PUBLIC OR CORPORATE  
OFFICER

Consultant Corporate Seal: