

NORTH CAROLINA  
COUNTY OF GUILFORD

PARTICIPATION AGREEMENT FOR THE  
EUGENE STREET STREETScape PROJECT

THIS PARTICIPATION AGREEMENT made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the CITY OF GREENSBORO, a North Carolina municipal corporation, hereinafter referred to as the "City" and CIP Construction Company, hereinafter referred to as the "Company,"

WITNESSETH:

WHEREAS, the Company is developing a multi-family residential facility;

WHEREAS, the City is planning the construction of the Streetscape Improvement along Eugene Street in the vicinity of the Company's property;

WHEREAS, the Company is preparing the design of the Eugene Street Streetscape Project;

WHEREAS, the Company desires to construct a portion of the Streetscape Improvement 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 Company has agreed to construct the proposed portion with its site development activities to expedite its completion;

WHEREAS, the City has reviewed and approved the estimate of Company's cost to build the proposed street improvements, attached as Exhibit B and incorporated herein by reference, and find said aforementioned documents to be reasonable and in line with expected costs;

WHEREAS, once the Eugene Street Streetscape Project is completed, it will facilitate the movement of public vehicular, pedestrian and bicycle traffic, enhance public convenience and improved public safety;

NOW THEREFORE, it is hereby agreed that:

1. Company Obligations to Qualify for Reimbursement

The Company shall:

a. Manage, administer and construct the Company's Work according to the plans and specification approved by the City. All plans, specifications, and designs are subject to review and approval by the City and shall be in a form acceptable to it.

b. Solicit for bids and award the construction contracts for the Company's Work according to the public bidding laws in North Carolina General Statutes 143-129 et. seq including, but not limited to requiring the successful contractors to provide insurance and to post bid, performance, and payment bonds. All plans, specifications, and bid packages for the Work shall be submitted to the City for approval prior to delivery to prospective bidders.

c. 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.

d. Provide necessary construction access on its property for the period of construction

e. Permit the City to inspect and approve the construction of the Project.

f. Obtain written authorization from the City to proceed through each of the following steps as it pertains to the Company's Work:

1. Plan approval.
2. Contract specification and proposal review.
3. Advertisement for bids.
4. Bids tabulation review (formal and informal).
5. Contract award.
6. Preconstruction conference (City attendance required).
7. Notice to proceed.
8. Change Orders (increase or decrease).
9. Construction design changes.

Failure of the City to timely respond to Company's written requests for authorization of the above steps 1-9 within fourteen (14) calendar days shall constitute City's acceptance and authorization of such step.

g. 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.

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

## 2. Schedule of Reimbursement

a. The City will reimburse Company for the Company's Work for actual construction costs-and ten percent (10%) of the actual construction costs for management, excluding insurance, attorney's fees, and land acquisition for the Project in an amount not

to exceed \$398,346.

b. The Company shall cause relocation and adjustment of all utilities in conflict with the project as indicated on the approved plans. Unforeseen conditions and utility conflicts not indicated on the approved plans shall be addressed through a change order to the contract. Said work shall require prior approval by the City Utility Coordinator and be performed in a manner satisfactory to the City prior to the Company beginning construction of the project. The City will assist Company, upon Company's written request, with coordinating the relocation of all utilities where necessary and will require relocation by utility companies pursuant to their franchises where applicable.

c. 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 City's Work on a monthly basis, provided all other provisions of this Agreement are met and upon verification by City Inspectors of quantities and completion of work. The City shall confirm the quantities and completion of the work within fifteen (15) days of submission of the invoices. The City shall provide notice to the Company within the fifteen (15) day period for inspection of any issues with regard to the quantities and completion, and the Company shall respond within five (5) days thereafter. In the absence of timely objection, the invoice shall be paid in full. 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 or construction work done, or materials delivered, prior to awarding of a contract, or contracts, in full accordance with N.C.G.S. §143-129 and other relevant laws.

e. On the Company's Work, the Company shall contract with its contractors for a retainage of five percent (5%) of the total construction bid to be withheld from their payments. This amount shall be retained from the reimbursement by the City pending final total completion and acceptance by the City and the Company of the City's Work.

### 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 acts or omissions or from claims for inverse condemnation as a result of the construction 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. 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.

12. 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

13. Should any part of this Agreement be declared unenforceable, all remaining sections remain in force.

14. 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.

15. 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.

## 16. IRAN DIVESTMENT ACT CERTIFICATION

N.C.G.S. 147-86.55 et. seq requires this certification for bids or contracts with the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina. The certification is required at the following times:

- When a bid is submitted
- When a contract is entered into (if the certification was not already made when the vendor made its bid)
- When a contract is renewed or assigned

N.C.G.S. 147-86.55 et. seq requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List.

The State Treasurer's Final Divestment List can be found on the State Treasurer's web address [www.nctreasurer.com/Iran](http://www.nctreasurer.com/Iran) and will be updated every 180 days.

As of the date listed below, the vendor, bidder, or proposer named herein is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.55 et. seq

The undersigned hereby certifies that he or she is authorized by the vendor, bidder, or proposer listed below to make the foregoing statement.

## 17. 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.

18. 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:

CIP Construction Company

PO Box 35169

Greensboro, NC 27425





## Exhibit A

[The construction plans constitute this exhibit]

**Exhibit B****Eugene Streetscape Construction Preliminary Cost Estimate**

Item	Quantity	Unit	Unit Price	Total	
Mobilization	1	LS	\$ 13,100	\$ 13,100	
Grading	1	LS	\$ 17,500	\$ 17,500	
Curb & Gutter, Pavement Demo & disposal	1	LS	\$ 14,600	\$ 14,600	
15" RCP	20	LF	\$ 168	\$ 3,360	
COG Structure 409	1	Each	\$ 1,900	\$ 1,900	
OSCI	2	Each	\$ 3,800	\$ 7,600	
Remove Curb Inlet	2	Each	\$ 600	\$ 1,200	
Pipe Removal	31	LF	\$ 25	\$ 775	
Tie-in to Existing Structure	1	Each	\$ 600	\$ 600	
Relocate Fire Hydrant	1	Each	\$ 2,500	\$ 2,500	
New Curb and Gutter	526	LF	\$ 23	\$ 12,098	
Sidewalk w 2'x2' Score Pattern	360	SY	\$ 42	\$ 15,120	
Sidewalk w 1'x1' Score Pattern	12	SY	\$ 55	\$ 660	
Concrete Apron	25	SY	\$ 85	\$ 2,125	
Wheelchair Ramps	2	Each	\$ 500	\$ 1,000	
Paving - Binder	50	Tons	\$ 250	\$ 12,500	
Paving - Top Course	10	Tons	\$ 250	\$ 2,500	
Adjust Clean Out	3	Each	\$ 300	\$ 900	
Adjust Manholes	3	Each	\$ 800	\$ 2,400	
Adjust Valve Boxes	6	Each	\$ 700	\$ 4,200	
Traffic Control on N. Eugene	1	Each	\$ 7,500	\$ 7,500	
Striping - Paint	1	Each	\$ 5,000	\$ 5,000	
Brick Pavers (2' in width)	400	LF	\$ 30	\$ 12,000	
Engineering	1	Each	\$ 25,120	\$ 25,120	
Staking	1	Each	\$ 5,560	\$ 5,560	
Concrete Pads	5	Each	\$ 4,200	\$ 21,000	
4" Sanitary Sewer	5	Each	\$ 2,470	\$ 12,350	
Water Services	5	Each	\$ 6,260	\$ 31,300	
Landscaping and Irrigation	1	LS	\$ 25,000	\$ 25,000	
<b>Sub-Total</b>				<b>\$ 261,468</b>	
Admin Costs				\$ 26,147	10%
<b>Total</b>				<b>\$ 287,615</b>	
Contingency				\$ 100,665	35%
Admin Costs				\$ 10,067	10%
<b>Total</b>				<b>\$ 398,346</b>	