**PARTICIPATION AGREEMENT**

THIS AGREEMENT is made as of the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ by and between the **City of** \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Unit of Local Government”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Inc. (“Company”).

WHEREAS, the Unit of Local Government is interested in obtaining reliable, safe infrastructure to benefit primarily low-to-moderate income persons; and

WHEREAS, the Company is interested in expanding its operation/infrastructure to benefit persons within the Unit of Local Government’s legal boundaries.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

I. GENERAL DEFINITIONS

 1.1 “Application” shall mean all materials submitted by the Unit of Local Government to the State of Illinois in connection with this Agreement.

 1.2 “Company Contribution” shall mean the contribution that the Company shall make in connection with the Agreement, as fully described in the CDBG Grant Application.

 1.3 “DCEO Funds” shall mean the sum of $\_\_\_\_\_\_\_\_\_\_ representing the grant received by the Unit of Local Government pursuant to its agreement with the Illinois Department of Commerce and Economic Opportunity (DCEO).

 1.4 “Project” shall mean the public improvements to be constructed as fully described in CDBG Grant Application.

II. PERFORMANCE

 2.1 The Unit of Local Government agrees, subject to the terms and conditions of this Agreement, to construct the Project, as described in the Scope of Work in the CDBG Grant Application.

 2.2 The Project cost shall be paid with:

 (a) DCEO funds;

 (b) Leverage funds; and/or

 (c) Other funds necessary to complete the project

As described in the CDBG Grant Application.

2.3 In the event the Unit of Local Government fails to receive the DCEO funds, for any reason, this Agreement shall be terminated, at the sole option of the Unit of Local Government.

2.4 The Company agrees, subject to the terms and conditions of this Agreement, to construct the Project, as described in the CDBG Grant Application.

2.5 If applicable, the Company agrees to provide the Company Contribution as provided in the CDBG Grant Application.

III. CONVENANTS, REPRESENTATIONS AND WARRANTIES OF THE COMPANY

 3.1 On or prior to the date of this Agreement, the Unit of Local Government shall have received a certified copy of the Company’s Articles of Incorporation and By-Laws or Partnership Certificate and Partnership Agreement, as the case may be, evidence of Company’s good stating and resolutions of the Board of Directors or the general partner of the Company, as the case may be, authorizing this Agreement and such additional supporting documents as the Unit of Local Government may request.

 3.2 On or prior to the date of This Agreement, all legal matters incident to this Agreement and the transactions contemplated hereby shall be satisfactory to the Unit of Local Government.

 3.3 Company represents and warrants that:

 (a) Company is a corporation or partnership, as the case may be, duly formed, validly existing and in good standing under the laws of Illinois, is duly licensed and duly qualified as a foreign corporation or partnership, as the case may be, in good standing in all the jurisdictions in which the character of the property owned or leased or the nature of the business conducted by it requires such licensing or qualification and has all corporate or partnership powers, as the case may be, and all material governmental licenses, authorizations, consents and approvals required to carry on its business as now conducted.

 (b) The execution, delivery and performance by Company of this Agreement, are within Company’s corporate or partnership powers, have been duly authorized by all necessary corporate or partnership action, require no action by or in respect of, or fining with, any governmental body, agency or official and do not contravene any provision of applicable law or regulation or of the Articles of Incorporation or By-Laws or Partnership Agreement of Company, as the case may be.

 (c) This Agreement constitutes a valid and binding agreement of Company.

 (d) The Application is in all respects true and accurate and there are no omissions or other facts or circumstance which may be material to this Agreement or the Project.

 (e) The financial statement, contained in the Application fully and accurately present the financial condition of the company. No material adverse change in the condition, financial or otherwise, of Company has occurred since the date of the financial statements.

 (f) Neither Company nor, to the best of the Company’s knowledge, any of its employees have been convicted of bribing or attempting to bribe an officer or employee of the Unit of Local Government, nor has the Company made an admission of guilt of such conduct which is a matter of record.

 3.4 The Company shall keep detailed records of all matters related to this Agreement.

 3.5 The Company shall comply with all applicable state and federal law and regulations promulgated thereunder. Company shall comply with all applicable laws and regulations prohibiting discrimination on the basis of race, sex, religion, national origin, age or handicap, including but not limited to the Illinois Human Rights Act, as now or hereafter amended, and the Equal Employment Opportunity Clause promulgated pursuant thereto.

 3.6 Company shall fully and completely indemnify, defend and hold harmless the Unit of Local Government and the State of Illinois and their officers, directors, employees and agents against any liability, judgement, loss, cost, claim, damage (including consequential damage) or expense (including attorney’s fees and disbursements, settlement costs, consultant fees, investigation and laboratory fees) to which any of them may become subject insofar as they may arise out of or are based upon this Agreement or any agreement or document executed by Company and Unit of Local Government as part of the transaction described herein.

 3.7 The Unit of Local Government shall have the right of access, at all reasonable hours, to Company’s premises and books and records for the purpose of determining compliance with this Agreement. In addition to the reporting specifically required hereunder, Company shall furnish to the Unit of Local government such information as the Unit of Local Government may reasonably request with respect to this Agreement.

 **IV. DEFAULT AND REMEDIES**

4.1 If one or more of the following events ("Defaults") occurs and is not timely cured, then, the Unit of Local Government may declare Company in default under this Agreement and seek any of the enumerated remedies described in this Section.

 (a) Company fails to observe or perform any covenant or agreement contained in this Agreement, including the Exhibits hereto, for 10 days after written notice to cure thereof has been given to Company by the Unit of Local Government;

 (b) Any representation, warranty, certificate or statement made by Company in this Agreement, including the Exhibits hereto, or in any certificate, report, financial statement or other document delivered pursuant to this Agreement shall prove to have been incorrect when made in any material respect;

 (c) Company shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

 (d) An involuntary case or other proceeding shall be commenced against Company seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceedings shall remain undismissed and unstayed for a period of 60 days; or an order for relief shall be entered against Company under the federal bankruptcy laws as now or hereafter in effect;

 (e) Company fails to complete the project, as presented in the CDBG Grant Application, and as required.

 then, the Unit of Local Government may declare Company in default under this Agreement.

 4.2 If a Default shall have occurred, then the Company shall reimburse the Unit of Local government for all funds (including Revolving Loan funds) expended by the Unit of Local Government on, or related to, the construction of the Project, including, but not limited to engineering, construction, administrative, and incidental costs related thereto.

 4.3 Reimbursement shall be made to the Unit of Local Government within 30 days after the Unit of Local Government notifies the Company of the determination of the Default. If the Company fails to reimburse within 30 days after the date of the notice, the Unit of Local Government shall have the right to collect interest on the unpaid balance beginning on the 30th day after notice at a rate equal to 12 percent per annum.

 4.4 If the Unit of Local Government is successful in any proceeding to enforce the terms of this Agreement, then the Unit of Local Government shall have the right to obtain from the Company, as an additional remedy, attorney fees, costs and expenses, related to the proceeding.

**V. TERMINATION**

5.1 This Agreement will terminate when the Project has been completed and when all of the terms and conditions of this Agreement (including the Exhibits thereto) creating duties upon the Company, have been satisfied by the Company.

 **VI. GENERAL PROVISIONS**

6.1 Notice required hereunder shall be in writing and shall be deemed to have been validly served, given or delivered upon deposit in the United States mail, by registered mail, return receipt requested, at the address set forth on the signature page hereof or to such other address as each party may specify for itself by like notice.

 6.2 All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the execution of the Agreement and shall continue in full force and effect so long as the Agreement shall be in force.

 6.3 No failure or delay by the Unit of Local Government in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

 6.4 Wherever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision shall be invalid under applicable law, such provision shall be ineffective to the extent of such invalidity without invalidating the remaining provisions of this Agreement.

 6.5 This Agreement represents the full and complete agreement between the parties with respect to the matters addressed herein and there are no oral agreements or understandings between the parties.

 6.6 This Agreement shall be construed in accordance with and governed by the law of the State of Illinois, and Federal Regulation 2 CFR 200 and the Housing and Community Development Act of 1974.

 6.7 This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

 6.8 No modification of or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the parties hereto, and provided further, that the Unit of Local Government shall obtain written consent of the Illinois Department of Commerce and Economic Opportunity prior to executing an6y such modification or waiver.

 6.9 The Company certifies that it has not been barred from bidding on or receiving State contracts as a result of a violation of Section 33E-3 or 33E-4 of the Criminal Code of 1961 (bid rigging or bid rotating, respectively).

 6.10 The Company certifies that it has not been barred from being awarded a contract or subcontract under Section 50.5 of the Illinois Procurement Code (30 ILCS 500).

 6.11 The Company acknowledges that receipt of benefits under this agreement may require compliance with the Prevailing Wage Act (HUD 29 CFR, Part V). Persons willfully failing to comply with or violating this act may be in violation of the Criminal Code. Questions concerning compliance with the Prevailing Wage Act should be directed to the Illinois Department of Labor.

 6.12 The Unit of Local Government acknowledges that if the project as proposed by this Agreement is completed in accordance with this Agreement then the provisions cited above in 6.9, 6.10, and 6.11 do not apply to the Company but do apply to the activities to be completed by the Unit of Local Government.

 6.13 (If applicable) The Unit of Local Government will turn over the public infrastructure improvement it constructed in whole or in part with CDBG funding to the Company at the completion of construction, either in consideration of Agreement-budgeted funding provided by the Company, or for the nominal sum of one (1) US Dollar.

**IN WITNESS WHEREOF,** the parties executed this Agreement the day and year first above written.

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|  (company name) |  |  |  (unit of local government) |
| By: (Name of Officer) Its: President |  |  |  | By: Honorable (Name of Official) Its: Chief Elected Official |
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