

CITY OF HIGH POINT

AGENDA ITEM



TITLE: Nonprofit Agreement – High Point Market Authority – Showroom District Improvements	
FROM: Damon C. Dequenne, Assistant City Manager	MEETING DATE: February 5, 2024
PUBLIC HEARING: N/A	ADVERTISED DATE/BY: N/A
ATTACHMENTS: Nonprofit Organization Agreement	

PURPOSE:

To consider execution of an agreement with High Point Market Authority (HPMA) for the design and construction of improvements in the Showroom District.

BACKGROUND:

Included in the adoption of this year's state budget was \$9 million dollars for capital funding of infrastructure and other improvements for the HPMA. The funding is spread over two years, \$4 million in the current fiscal year and \$5 million in the next. HPMA and the city desire to enter into an agreement where the city would administer the public improvements and contribute in kind services and a not to exceed amount of \$3.4 million toward the same.

The improvements consist of, but are not limited to, the following.

- Additional pedestrian level lighting for safety and aesthetics
- Security camera integration to enhance security
- Upgrades and maintenance to transportation terminal
- On street staffed debris removal during Pre-Market and Market
- Graffiti removal and abatement
- General beautification efforts (hanging baskets, benches, decorative cans, and planters)
- Burying power lines, installing traffic and fiber optic facilities, sidewalks, water and sewer and stormwater utilities on portions of South Main Street, West Russell Avenue, and South Wrenn Street

BUDGET IMPACT:

Funding for the City obligations will be included in the proposed 2024/2025 Electric (approximately \$3.1 million) budget and available pending approval of the budget by City Council. The Transportation (approximately \$300,000) improvements will be funded with existing capital appropriations.

RECOMENDATION /ACTION REQUESTED:

The City Council is requested to approve the Nonprofit Organization Agreement with High Point Market Authority and to authorize the appropriate city officials to execute all necessary documents.



NONPROFIT ORGANIZATION AGREEMENT

THIS NONPROFIT ORGANIZATION AGREEMENT (“Agreement”) is made this ____ day of February, 2024 (the “Effective Date”), by and between the **CITY OF HIGH POINT**, a North Carolina municipal corporation (the “City”), and **HIGH POINT INTERNATIONAL HOME FURNISHINGS MARKET AUTHORITY CORPORATION**, a North Carolina nonprofit corporation (“Organization”). The City and the Organization are at times collectively referred to hereinafter as the “Parties” or individually as a “Party”.

WHEREAS, the Organization is organized and operated exclusively for exempt purposes as set forth in section 501(c)(6) of the Internal Revenue Code; and

WHEREAS, the Organization has secured state funding to provide certain public improvements as further defined below (hereinafter the “Improvements”) generally located within the Core City Showroom District of the City, as shown on **Exhibit A** attached hereto and incorporated herein by reference; and

WHEREAS, the City and the Organization desire to install and agree that the Improvements consist of the following:

- Additional pedestrian level lighting for safety and aesthetics
- Security camera integration to enhance security
- Upgrades and maintenance to transportation terminal
- On street staffed debris removal during the Organization’s Pre-Market and Market
- Graffiti removal and abatement
- General beautification efforts (hanging baskets, benches, decorative trash cans, and planters)
- Burying power lines, installing conduit, and other traffic and fiber optic facilities, sidewalks, water and sewer and stormwater utilities on portions of South Main Street, West Russell Avenue, and South Wrenn Street, as depicted on **Exhibit B** attached hereto and incorporated herein by reference; and

WHEREAS, the estimated cost of the Improvements, including but not limited to, engineering, labor, and materials, is in excess of nine million dollars (\$9,000,000.00); and

WHEREAS, the City and the Organization agree to share in the cost of the Improvements as more particularly described below, in order to promote uniform street improvements and facilitate pedestrian transportation while enhancing appearances and condition of the area;

WHEREAS, the Parties agree that sharing of costs allows the construction of the Improvements to be more economical and efficient; and

WHEREAS, the City has determined that the Organization is capable of providing the Improvements, it is in the public’s interest for the Organization to do so, and the Improvements serve a public purpose that the City is authorized by law to engage in.

NOW, THEREFORE, the City and the Organization, in consideration of their mutual covenants, hereby agree as follows:

SECTION I. RESPONSIBILITIES OF THE ORGANIZATION

A. Construction of the Improvements. The Organization will work with the City for the construction of the Improvements, accepting responsibilities as follows:

1. The Organization will facilitate and coordinate with private property owners regarding impacts of the Improvements to their property.
2. The Organization will manage and complete any non-public improvements.

B. Sharing of Costs. The Organization agrees to share in the costs of the Improvements in order to promote uniform street improvements and facilitate pedestrian transportation while enhancing appearances and condition of the area.

C. Reimbursement to City. The Organization agrees to reimburse the City for expenses related to the Improvements monthly, but no later than thirty (30) days after invoice. Invoices will be accompanied by adequate justification and documentation as agreed to by the Parties.

D. Easements and Permits. The Organization agrees to execute all necessary documents to facilitate the completion of the Improvements, including without limitation, facilitating any and all necessary easements naming City as the grantee without costs.

E. Representations and Warranties. The Organization represents and warrants that it has no knowledge of the presence of any hazardous or toxic materials, compounds, or chemicals, on or around the property related to the Improvements that might interfere with or make unsafe the Improvements under this Agreement.

F. Compliance with Law and Non-Discrimination. The Organization shall comply with all Federal, State and local laws and ordinances applicable to the Improvements. The Organization shall at all times comply with all safety and health regulations, standards and codes applicable to the Improvements. The Organization shall not discriminate in any manner on the basis of race, color, gender, national origin, age, disability, religion, sexual orientation, gender identity/expression, familial status, or veteran status.

G. E-Verify. The Organization 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 Organization also certifies that it will require that all of its subcontractors that provide any of the Improvements comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Violation of this section shall be deemed a material breach of this Agreement.

H. No Debarment. The Organization represents and warrants to the City that it is not currently (a) under sanction, exclusion, or investigation (civil or criminal by a federal or state enforcement, regulatory, administrative, or licensing agency) or otherwise ineligible for federal or state program participation, or (b) listed on North Carolina or any other state or federal debarment databases (e.g., Office of Inspector General and System for Award Management).

SECTION II. RESPONSIBILITIES OF THE CITY

A. Construction of the Improvements. The City will work with the Organization for the construction of the Improvements, accepting responsibilities as follows:

1. The City shall act as primary agent for design and construction of the Improvements.
2. The City shall provide contract oversight and management for the design and construction of the Improvements.
3. The City shall coordinate with North Carolina Department of Transportation regarding improvements or encroachments in their right-of-way.
4. The City shall provide documentation and invoices, as necessary, to the Organization for compliance with the North Carolina Department of Commerce funding requirements.
5. The City shall be responsible for all future maintenance of the Improvements within the public right-of-way.

B. Sharing of Costs. The City agrees to share in the costs of the Improvements in order to promote uniform street improvements and facilitate pedestrian transportation while enhancing appearances and condition of the area. The City contributions to the Improvements will consist of “in kind” services and monetary funding in an amount not to exceed three million four hundred thousand (\$3,400,000.00) toward the burying of electric power lines and upgrades/maintenance to transportation terminal.

SECTION III. RELATIONSHIP BETWEEN THE PARTIES

A. Independent Contractor. The Organization is an independent contractor. The Organization, its employees, subcontractors, suppliers and consultants are not, individually or collectively, to be deemed an employee or employees of the City under any circumstances. This Agreement shall not under any circumstances be construed to make the City and the Organization joint venturers, partners or parties to similar relationships with each other.

SECTION IV. TERM AND TERMINATION

A. Term. The term of this Agreement will commence on the Effective Date and continue until the Improvements are completed.

B. Termination for Breach. This Agreement may be terminated by either Party upon notice to the other Party in the event of the other Party's material breach of this Agreement; provided that no termination for material breach may be effected unless the breaching Party fails to cure such breach within thirty (30) calendar days following its receipt of notice of such breach from the non-breaching Party.

SECTION V. DISCLAIMER, INDEMNIFICATION, AND INSURANCE

A. Disclaimer of Liability. Under no circumstances will the City be liable for the Organization's provision of the Improvements.

B. General Indemnification. To the fullest extent allowed by law, the Organization shall indemnify, hold harmless and defend the City, its employees, agents and representatives, from and against any and all claims or damages directly or indirectly arising out of or resulting from or related to the Organization's provision of the Improvements.

C. Insurance. The Organization shall, at its own cost and expense, procure and maintain, and cause all subcontractors and suppliers to procure and maintain, in full force and effect during the entire term of this Agreement, commercially reasonable insurance coverage.

D. The City as Additional Insured. The City, its employees, agents and representatives shall be listed as an additional insured on all insurance coverages procured by the Organization pursuant to this Agreement.

E. Certificates of Insurance. The Organization shall, prior to the Organization's provision of the Improvements, provide properly completed certificates of insurance showing the existence and effective dates of all coverages.

SECTION VI. MISCELLANEOUS

A. Governing Law and Venue. This Agreement and performance thereof shall be governed, interpreted, construed, and regulated by the laws of the State of North Carolina without giving effect to its principles regarding conflicts of laws. Any legal suit, action, or proceeding arising out of or related to this Agreement shall be instituted exclusively in the courts of North Carolina located in Guilford County, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court. To the extent permitted by applicable law, if any action, suit, or other legal or administrative proceeding is instituted or commenced by either Party hereto against the other Party arising out of or related to this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing Party, in addition to any damages and costs otherwise awarded to the prevailing Party.

B. Entire Agreement, Conflicting Provisions. This Agreement, together with all Exhibits and any other documents incorporated herein by reference, constitutes the sole and

entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In case of a conflict between the provisions of this Agreement and the provisions of any attachment or other document referenced by or incorporated into this Agreement, the provisions of this Agreement shall control and prevail.

C. Successors and Assigns. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement. Neither Party may assign, sublet, subcontract, or transfer any interest in this Agreement without the prior written consent of the other Party.

D. Captions and Headings. The captions and headings contained in this Agreement are for convenience and reference only, and do not define, describe, extend, or limit the scope or intent of this Agreement or the scope or intent of any provision contained herein.

E. Severability. The invalidity of one or more phrases, sentences, clauses, or sections in this Agreement shall not affect the validity of the remaining portions of this Agreement, so long as the material purpose of this Agreement can be determined and effectuated.

F. No Waiver. Any failure by either Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any such provision.

G. Counterparts. This Agreement may be signed in any number of counterparts, and all such counterparts together shall constitute one and the same instrument. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

H. Amendments and Waivers. This Agreement may be amended, modified, or supplemented only by an agreement in writing signed by each Party hereto. No waiver by either Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving.

I. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); or (b) on the third (3rd) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the addresses indicated below (or at such other address for a Party as shall be specified in a notice given in accordance with this **Section VI.I**):

If to the City:

City of High Point
City Manager's Office
211 South Hamilton Street
P.O. Box 230
High Point, NC 27261

If to the Organization:

(See Organization's address for notices on the signature page hereof.)

J. Disclosure. Organization agrees that it shall make no statements, press releases, or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars, thereof, without first notifying the City and securing its consent in writing.

K. Interpretation. For purposes of this Agreement, (a) the words "include," "includes," and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof, and (y) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

L. Continuation of Performance During Dispute. During the pendency of any dispute between the Parties arising out of or relating to this Agreement, provided that Organization's continued performance is requested by the City in writing, it shall be the responsibility of Organization to continue to perform in conformity with the Agreement. For the avoidance of doubt, the provisions of this **Section VI.L** shall not apply in the event of a termination of this Agreement pursuant to **Section IV**.

M. Representation of Authority. Any individual executing this Agreement on behalf of Organization hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of Organization and does so with full legal authority.

[SIGNATURES BEGIN ON THE NEXT PAGE]

IN WITNESS WHEREOF, this Agreement is entered into by the Parties as of the Effective Date.

Organization:

HIGH POINT INTERNATIONAL HOME
FURNISHINGS MARKET AUTHORITY
CORPORATION

By: _____

Name: _____

Title: _____

Organization's address for notices:

Attn.: _____

The City:

CITY OF HIGH POINT

By: _____

Name: _____

Title: _____

Preaudit Certificate

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Bobby Fitzjohn, Finance Officer

EXHIBIT A

to

NON-PROFIT ORGANIZATION AGREEMENT

Core City Showroom District

(See attached)

EXHIBIT B

to

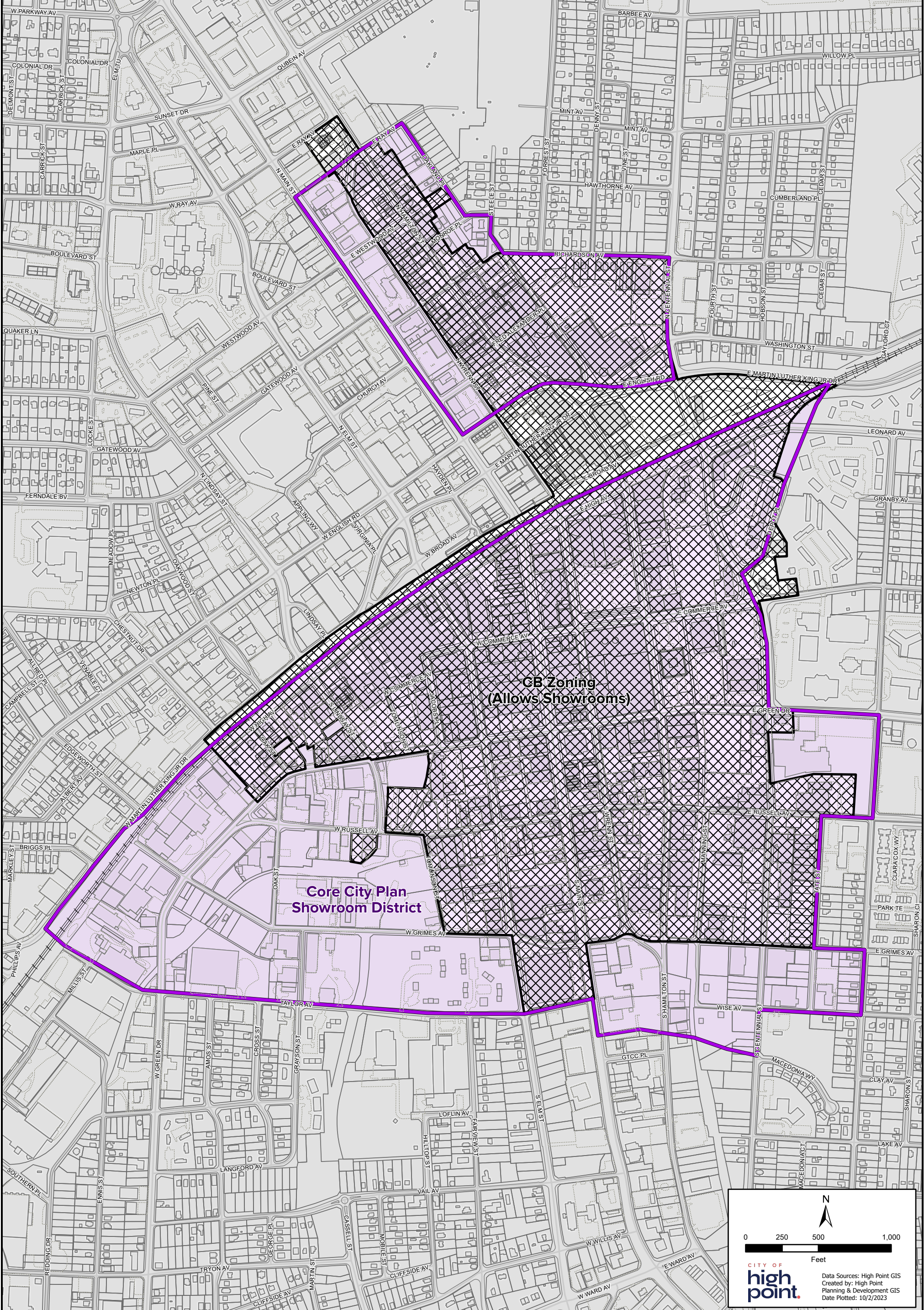
NON-PROFIT ORGANIZATION AGREEMENT

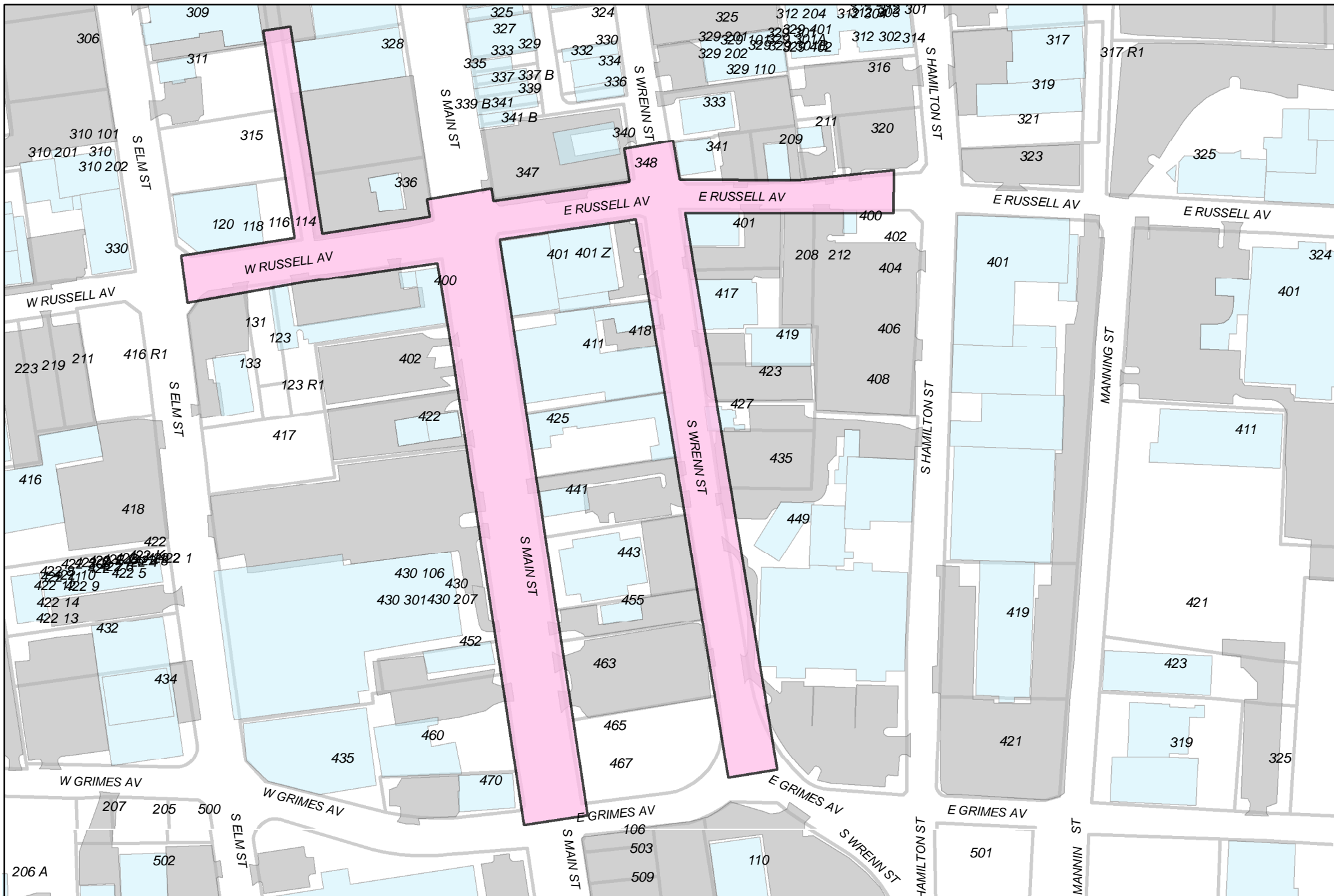
South Main Street Project Underground Conversion

(See attached)

CORE CITY SHOWROOM DISTRICT AND CB ZONING DISTRICT EXHIBIT A HIGH POINT, NC

 Central Business (CB)  Showroom District from Core City Plan





CITY OF HIGH POINT
 DEPARTMENT OF ELECTRIC UTILITIES
 P.O. BOX 230, HIGH POINT NC 27265
 (336) 883-3100
 Date: 7/5/2023

S MAIN PROJECT UNDERGROUND CONVERSION

EXHIBIT B