

**STATE OF NORTH CAROLINA**

**COUNTY OF GUILFORD**

**PASS-THROUGH**  
**GRANT AGREEMENT**

**THIS PASS-THROUGH GRANT AGREEMENT** (“Agreement”) is made and entered into the 10th day of May, 2022, between the **CITY OF HIGH POINT** (“City”), a North Carolina municipal corporation with a principal place of business located at 211 South Hamilton Street, High Point, North Carolina, and the **HIGH POINT CHAMBER FOUNDATION, INC.** (“Foundation”), a North Carolina non-profit corporation with a principal place of business located at 1634 North Main Street, High Point, North Carolina, (individually a “Party” and collectively the “Parties”).

**WHEREAS**, the Foundation has established and commenced development of the High Point Equity Project, now known as THRIVE High Point Minority Entrepreneurship Initiative (“Project”), which supports the growth and development of minority-owned and economically challenged businesses in the City through the provision of non-traditional business financing, technical assistance, entrepreneurial mentorship, and business coaching; and

**WHEREAS**, the State Appropriations Act of 2021, as amended by N.C. S.L. 2018-189 (“Authorizing Legislation”) appropriated to the Rural Economic Development Division of the North Carolina Department of Commerce (“DOC”) the sum of one million dollars (\$1,000,000.00) in non-recurring funds for the 2022-23 fiscal year (“Grant Funds”) as a directed grant to the City for Project; and

**WHEREAS**, the City and the DOC are entering into a Rural Economic Development Challenge Grant Agreement (“Grant Agreement”) governing, among other things, the disbursement and use of the Grant Funds and setting forth various monitoring and reporting obligations the City, or its designee, must satisfy.

**NOW, THEREFORE**, in consideration of the mutual promises and such other valuable consideration as set forth herein, the City and the Foundation agree to the following terms and conditions:

**1. Funding / Use of Funds.**

Upon the receipt of the Grant Funds from DOC, the City shall immediately disburse the Grant Funds to the Foundation, which shall only be used by the Foundation in accordance with the Grant Agreement, this Agreement and the uses set forth in the Authorizing Legislation, including programs that support the growth and development of minority-owned and economically challenged businesses in the City through the provision of non-traditional business financing, technical assistance, entrepreneurial mentorship, and business coaching. The Foundation hereby represents and warrants that the Funds shall be utilized exclusively for the purpose of the Project and consistent with the Grant Agreement, this Agreement and the Authorizing Legislation and all other applicable laws, rules, regulations and requirements. The Foundation shall not make or approve of any improper

expenditure of the Funds. The City may request, and the Foundation shall promptly produce, any information justifying the use of the Funds. The Foundation shall submit reports in accordance with the requirements of the Grant Agreement and this Agreement, representing as proof that work on the Project has been performed and, if deemed sufficient by the City, shall constitute a certification that the work represented has actually been performed by the Foundation.

**2. Anticipated Project Term.**

The Project shall commence immediately upon execution of this Agreement and shall be completed no later than July 1, 2023 ("Completion Date"), unless terminated on an earlier date, under the terms of this Agreement or the Grant Agreement, or unless extended for an additional term to be provided in writing by the City.

**3. Project Records.**

- (a) The Foundation shall maintain full, accurate and verifiable financial records, supporting documents and all other pertinent data for the Project in such a manner as to clearly identify and document the expenditure of the Funds separate from accounts for any separate awards, monetary contributions or other revenue sources for this Project.
- (b) The Foundation shall retain all financial records, supporting documents and all other pertinent records related to the Project for a period of five (5) years from the last disbursement of the Grant funds or the termination date, whichever is later. In the event such records are audited, all Project records shall be retained beyond the five (5) year period until the audit is concluded and any and all audit findings have been resolved.

**4. Monitoring, Reports and Audits.**

- (a) The Foundation agrees to ensure compliance and provide assistance with such monitoring and auditing requirements as the DOC or the City may request. Additionally, the Foundation shall regularly monitor all Project activities to ensure that time schedules are being met and other performance goals are being achieved. Further, the Foundation shall maintain records and accounts that properly document and account for the application of all Funds for a minimum of five (5) years after the Completion Date. The Foundation shall immediately notify the City of any change in conditions, or any other event, which may significantly affect the the Foundation's ability to oversee, administer or perform its obligations under this Agreement or the Project.
- (b) The Foundation shall furnish the City, or directly to DOC, a detailed written final report within forty-five (45) days of the Termination Date. If the Termination Date is extended, a final report shall be furnished within forty-five (45) days of the new Termination Date. The Foundation shall furnish detailed written progress reports as otherwise requested by the City or DOC within thirty (30) days of the request

from the City or DOC. Such progress and final reports should describe the progress made by the Foundation towards achieving the requirements and purpose(s) of the Project and shall include detailed financial documentation proving the Funds were appropriately expended. Such descriptions should include the successes and problems encountered during the reporting period. Failure to submit a required report by the scheduled submission date or submission of an inadequate report will trigger repayment of the Grant Funds.

- (c) The Foundation grants the City and the State and any of their related agencies, commissions or departments (including, without limitation, DOC, the North Carolina State Auditor and the North Carolina Office of State Budget and Management) and any of their authorized representatives, at all reasonable times and as often as reasonably necessary (including after the Completion Date), access to and the right to inspect, copy, monitor, and examine all of the books, papers, records and other documents relating to the Project. Likewise, the Foundation shall ensure that any third party it employs or contracts with to work on the Project provides the same access. In addition, the Foundation agrees to comply at any time, including after the Completion Date, with any requests by the City or the State (including, without limitation, DOC) for other financial and organizational materials to permit the City or State to comply with their fiscal monitoring responsibilities or to evaluate the short and long range impact of their programs.

## **5. Termination.**

If the Foundation fails to fulfill in a timely and proper manner their obligations or violate any of the covenants or stipulations under this Agreement, the Foundation agrees that the City has the right to terminate this Agreement by giving the Foundation written notice; provided that, the City has notified the Foundation in writing of its intent terminate this Agreement, the grounds for termination, and the Foundation has failed to cure any violations within twenty (20) calendar days of receiving the written notice. Upon such termination, the Foundation shall not expend any Grant Funds without the City's express written authorization and shall immediately return all unspent Grant Funds to the City.

## **6. Liability and Indemnification.**

The Foundation hereby agrees to release, indemnify and hold harmless the City and its elected and appointed officials, employees, agents and attorneys (together, the "Indemnified Parties"), from any claims of any third party arising out of any act or omission of the Foundation or any third party in connection with the performance of this Agreement or the Project, and for all losses arising from their implementation. Without limiting the foregoing, the Foundation hereby releases the Indemnified Parties from, and agrees that such Indemnified Parties are not liable for, and agrees to indemnify and hold harmless the Indemnified Parties against, any and all liability or loss, cost or expense, including, without limitation, reasonable attorneys' fees, fines, penalties and civil judgments, resulting from or arising out of or in connection with or pertaining to, any loss or damage to property or any injury to or death of any person occurring in connection with the Project, or resulting from any defect in the fixtures, machinery, equipment or other property used in connection

with the Project or arising out of, pertaining to, or having any connection with, the Project or the financing thereof (whether arising out of acts, omissions, or negligence of the Foundation or of any third party), including any claims and losses accruing to or resulting from any and all subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project.

**7. Independent Status of the Foundation.**

- (a) The Foundation is independent from the City. This Agreement, the Project, and any actions taken pursuant to them shall not be deemed to create a partnership or joint venture between or among the Foundation and the City or any third party. Nor shall this Agreement or the Project be construed to make the Foundation (including their employees, agents or contractors) or any third party into employees, agents, members or officials of the City. Neither the Foundation (including their employees, agents or contractors) nor any third party shall have the ability to bind the City to any agreement for payment of goods or services or represent to any person that they have such ability.
- (b) The Foundation shall be responsible for payment of all of their expenses, including rent, office expenses and all forms of compensation to its employees, agents and contractors. The Foundation shall provide workers' compensation insurance to the extent required for its operations and shall accept full responsibility for payments of unemployment tax or compensation, social security, income taxes and any other charges, taxes or payroll deductions required by law in connection with their operations, for themselves and their employees, agents and contractors who are performing work pursuant to this Agreement. All expenses incurred by the Foundation are their sole responsibility, and the City shall not be liable for the payment of any obligations incurred in the performance of the Project.

**8. The Foundation Representations and Warranties.**

The Foundation hereby represents and warrants:

- (a) The execution and delivery of this Agreement have been duly authorized by those authorized to bind the Foundation.
- (b) There is no action, suit proceeding, or investigation at law or in equity or before any court, public board or body pending, or to the knowledge of the Foundation, threatened against or affecting them that could or might adversely affect the Project or any of the transactions contemplated by this Agreement or the validity or enforceability of this Agreement or the abilities of the Foundation to discharge their obligations under this Agreement. If it is subsequently found that an action, suit, proceeding, or investigation did or could threaten or affect the development of the Project, the City can, in its discretion, terminate this Agreement upon notice and require the Foundation to repay to the City the entire amount of the Grant Funds.

- (c) The Foundation is solvent.

**9. Repayment Requirements and Remedies.**

- (a) The repayment requirements and remedies addressed herein are in addition to those repayment requirements and other remedies set forth elsewhere in this Agreement, including the requirements to repay unspent Grant Funds. No remedy conferred or reserved by or to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy provided for in this Agreement, or now or hereinafter existing at law, in equity, or by statute, and any such right or power may be exercised from time to time and as often as may be deemed expedient.
- (b) If there is a breach of any of the requirements, covenants or agreements in this Agreement (including, without limitation, any reporting requirements) and the Foundation has failed to cure any breach within twenty (20) days of receiving written notice from the City, or if there are any representations or warranties which are untrue as to a material fact in this Agreement or in relation to the Project (including the performance thereof), the Foundation agrees that the City may require repayment of an amount of Grant Funds to be determined in City's discretion but not to exceed the amount of Grant Funds received under this Agreement.

**10. Special Provisions and Conditions.**

- (a) The Foundation agrees not to discriminate by reason of age, race, religion, color, sex, national origin or disability related to the activities set forth in this Agreement.
- (b) The Foundation shall keep on file, along with the executed copies of this Agreement, a copy of policies adopted addressing conflicts of interest that may arise involving the members of the Foundation's governing body and/or any of its employees or officers involved in the Project.
- (c) The Foundation certifies that, as of the date of execution of this Agreement, no individuals have such a conflict of interest or will directly benefit, except in the capacities described above, from the Grant Funds or Project. Throughout the duration of this Agreement and the Project, the Foundation has the duty to promptly inform the City of any such conflict of interest of which they become aware.
- (d) The Foundation shall at all times observe and comply with all laws, regulations, codes, rules, ordinances and other requirements of the state, federal and local governments which may in any manner affect the performance or use of this Agreement, the Grant Agreement or the Project.
- (e) The Foundation shall not assign or transfer any interest in the Agreement without the prior written consent of the City.

**11. Notices.**

All notices required or permitted to be delivered hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States mails, certified, return receipt requested, first class, postage prepaid and addressed as follows:

**If to the City:** City of High Point  
Attn: Eric Olmedo  
211 South Hamilton Street, Room 320  
High Point, NC 27260

**If to the Chamber:** High Point Chamber Foundation, Inc.  
Attn: Patrick Chapin  
1634 North Main Street  
High Point, NC 27265

**12. Execution.**

This Agreement may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and such counterparts, together, shall constitute one and the same Agreement which shall be sufficiently evidenced by one of such original counterparts.

**13. Governing Law and Venue.**

This Agreement shall be construed and governed by the laws of the State of North Carolina (without giving effect to the principles thereof relating to conflicts of law). Any disputes, controversies, or claims arising out of the Agreement shall be brought in Guilford County, North Carolina.

**14. Modification, Severability, No Waiver.**

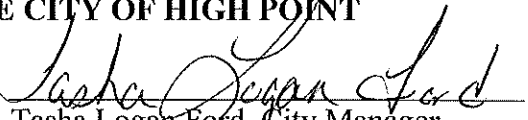
The Agreement may be modified or amended only by the written mutual consent of both Parties. The invalidity of one or more phrases, sentences, clauses or sections in the Agreement shall not affect the validity of the remaining portions of the Agreement, so long as the material purpose of the Agreement can be determined and effectuated. Any failure by either party to enforce any of the provisions of the Agreement or to require compliance with any of its terms at any time during the term of the Agreement shall in no way affect the validity of the Agreement, or any part hereof, and shall not be deemed a waiver of the right of such party thereafter to enforce any such provision.

**IN WITNESS WHEREOF**, the City and the Organization have caused the Agreement to be executed by their duly authorized representatives.

*Separate signature pages to follow.*

**THE CITY OF HIGH POINT**

By:

  
Tasha Logan Ford, City Manager

**Approved as to Form**

DocuSigned by:



E6032A9811AF46A

JoAnne L. Carlyle, City Attorney

5/11/2022 | 09:29:24 EDT

**Approval by Finance Officer**

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

DocuSigned by:



385F1C88F40E4DB...

Bobby Fitzjohn, Director of Financial Services

5/10/2022 | 12:48:48 PDT

**HIGH POINT CHAMBER  
FOUNDATION INC.**

DocuSigned by:

By:   
85A44C517A4E4AF...

Patrick Chapin, President

5/11/2022 | 09:33:35 EDT