

# CITY OF HIGH POINT

## AGENDA ITEM



**Title:** Memorandum of Understanding – High Point University

**From:** Randy McCaslin, Deputy City Manager

**Meeting Date:** September 18, 2017

**Public Hearing:** N/A

**Advertising Date:** N/A

**Advertised By:**

**Attachments:** Utilities and Intersection Improvement Agreement

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### **PURPOSE/BACKGROUND:**

The Finance Committee recommended the preparation of an MOU to clarify the roles and responsibilities of the City and High Point University for utilities and intersection improvements. in regard installation of underground electric distribution lines, conduit and other traffic and fiber optic facilities on North Centennial Street from or around Barbee Avenue to East Farris Avenue and on Montlieu Avenue from North Centennial Street to Denny Street.

### **BUDGET IMPACT:**

\$856,703.00

### **RECOMMENDATION / ACTION REQUESTED:**

Staff recommends that City Council approve the attached Utilities and Intersection Improvement Agreement between the City of High Point and High Point University.

**COUNTY OF GUILFORD**

**STATE OF NORTH CAROLINA**

**UTILITIES AND INTERSECTION  
IMPROVEMENT AGREEMENT**

**THIS UTILITIES AND INTERSECTION IMPROVEMENT AGREEMENT** ("Agreement") is entered into this \_\_\_\_ day of September, 2017, by and between the **CITY OF HIGH POINT**, a North Carolina municipal corporation located at 211 South Hamilton Street, High Point 27261 ("City"), and **HIGH POINT UNIVERSITY**, a North Carolina non-profit corporation located at One University Parkway, High Point 27268 ("HPU"). City and HPU referred to individually as "Party" and collectively the "Parties."

**WHEREAS**, City desires to install underground electric distribution lines, conduit, and other traffic and fiber optic facilities on North Centennial Street from Barbee Avenue to East Farriss Avenue and on Montlieu Avenue from North Centennial Street to Denny Street ("Improvements"); and

**WHEREAS**, HPU owns the real property upon which, and within the vicinity where, the Improvements will be made ("Subject Property"); and

**WHEREAS**, HPU agrees to share in the cost of the Improvements in order to promote uniform street improvements, facilitate pedestrian transportation, while enhancing appearances, condition and values of both the City and Subject Property; and

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

**NOW, THEREFORE**, in consideration of the of the mutual promises set forth herein, the City and HPU agree as follows:

1. **Construction of the Improvements.** City and HPU shall work together for the construction of the Improvements, accepting responsibilities as follows:

- (a) HPU shall install ducts in all non-pavement surfaces along North Centennial and Montlieu Avenue in accordance with any and all City specifications for the work.
- (b) HPU shall provide easements to the City for any ducts installed under this MOU.
- (c) City shall provide all conduits for installation of the duct work referenced above.
- (d) City shall provide all equipment, labor and materials in order to run City electrical wiring, traffic fiber, and any other service facilities moved from above ground to below ground.
- (e) The City shall install new street lights as needed in the determination of the City and remove all above ground utility poles (with the exception of the needed street light structures).
- (f) The City will replace the school flasher currently on North Centennial in the area of the Improvements.

2. **Estimated Cost of the Improvements.** The estimated cost of the Improvements, including but not limited to, labor, materials, trenching, removal of utility poles and lines, installation of electric, traffic, and fiber optic conduits and facilities, is \$1,208,968. (City estimates the amount of \$856,703 as its cost to perform the City's portion of the Improvements as set forth in Section 1. HPU estimates the amount of \$352,265 as its cost to perform HPU's portion of the Improvements as set forth in Section 1.)

3. **Additional Contribution to Costs.** In addition to performing the duties set forth in Section 1, HPU agrees to pay City \$260,000 to assist with City's expenses associated with the Improvements, thereby reducing the City's total expenditures to approximately \$596,703 with the Improvements. HPU agrees to make said payment no later than thirty (30) days after the completion of the Improvements.

4. **Easements and Permits.** HPU agrees to execute any and all necessary documents to facilitate the completion of the Improvements, including without limitations, any and all necessary easements naming City as the grantee without costs and procuring any and all necessary permits for the work associated with the Improvements undertaken by HPU.

5. **Notice.** Any notice given pursuant to the Agreement shall be in writing and signed by a representative of the Party giving such notice. Written notice may be: (a) hand-delivered; (b) sent by facsimile transmission; or (c) sent by overnight courier, messenger or registered or certified U.S. mail, postage prepaid, return receipt requested. Written notice shall be delivered to the City and the HPU at the following addresses:

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

HPU: High Point University  
Barry Kitley, Director of Community Relations  
One University Parkway  
High Point, NC 27268

6. **Parties Representations, Warranties, and Indemnifications**

- (a) HPU represents and warrants that it has no knowledge of the presence of any hazardous or toxic materials, compounds, or chemicals, on or around the Subject Property that might interfere with or make unsafe the Improvements under this MOU.

- (b) To the extent allowed by law, each Party shall defend any third party claim against the other Party arising from the death of or physical injury to any person or damage to the other Party's property, to the extent that the injury, claim, or damage was proximately caused by the negligence of the indemnifying Party, its agents or employees, and shall indemnify and hold harmless the other Party and its respective officers, agents, and employees, from and against damages, liabilities and reasonable costs and expenses, including reasonable legal fees incurred in connection therewith.

7. **Governing Law.** This Agreement shall be governed by the laws of the State of North Carolina.

8. **Entire Agreement.** This Agreement contains the entire agreement of the Parties, and supersedes any prior written or oral agreement between them concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, between and among the Parties relating to the subject matter of the Agreement, which are not fully expressed herein.

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

10. **Severability.** The invalidity of one or more phrases, sentences, clauses or sections of this 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.

**IN WITNESS WHEREOF,** the Parties have caused the Agreement to be executed on the day and year first above written by their duly authorized representatives.

**CITY OF HIGH POINT**

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William S. Bencini, Jr., Mayor

ATTEST:

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Lisa Vierling, City Clerk

**HIGH POINT UNIVERSITY**

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Debi S. Butt, Vice President of  
Financial Affairs

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the County and State  
aforesaid, certify that Debi S. Butt personally came before me this day and acknowledge  
that he/she is an officer and Vice President of High Point University, non-profit corporation  
organized in the state of North Carolina and that by authority duly given and as the act of the  
corporation, the foregoing instrument was signed in its name by its Vice President.

Witness my hand and official seal or seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_(Notary Public)

(SEAL/STAMP)

My Commission Expires: \_\_\_\_\_