

CITY OF HIGH POINT

AGENDA ITEM



Title: Forward High Point Agreement for Services

From: Greg Ferguson, Assistant City Manager
Community Services

Meeting Date: 1-21-2020

Public Hearing: N/A

**Advertising Date /
Advertised By:**

Attachments: Agreement

PURPOSE:

Agreement to formalize the services, goals and reporting provided by Forward High Point and funded by the City as part of the FY19/20 Budget.

BACKGROUND:

The City of High Point provides funds to Forward High Point for professional services to promote, market, plan and provide economic development assistance in the downtown area of the City. This agreement outlines the scope of services and goals as well as program requirements.

BUDGET IMPACT:

N/A – Appropriation of \$250,000 approved as part of FY19/20 Budget.

RECOMMENDATION / ACTION REQUESTED:

City Council is requested to approve agreement and authorize signature.

NORTH CAROLINA

AGREEMENT FOR SERVICES

GUILFORD COUNTY

THIS AGREEMENT FOR SERVICES (“Agreement”) is entered into this ___ day of _____, 2019, by and between the **CITY OF HIGH POINT**, a North Carolina municipal corporation, located at 211 South Hamilton Street, High Point, North Carolina (“City”), and **FORWARD HIGH POINT, INC.**, a North Carolina non-profit corporation, located at 164 South Main Street, High Point, North Carolina (“FHP”).

SERVICES

WHEREAS, the City desires to engage the FHP to provide the services in exchange for the City’s financial support in the amount of Two-Hundred Fifty Thousand Dollars (\$250,000) during fiscal year 2019 – 2020 (“Fiscal Year”);

WHEREAS, FHP desires to render the professional services, and has the experience, staff and resources to perform the Services;

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

1. PAYMENT OF FUNDS. The City shall distribute funds to FHP in four (4) equal installments of Sixty-Two Thousand Five Hundred Dollars (\$62,500) each. Payments shall be made to FHP on or before, July 10, 2019, October 10, 2019, January 10, 2020 and April 10, 2020.

2. SCOPE OF SERVICES FHP shall provide professional services based upon the Main Street Four Point Approach for the downtown area of the City, defined as the general geographic area bounded by Hamilton Street on the East, Lexington Avenue on the North, Lindsay Street on the west and Commerce Street on the south, and adjacent properties or as requested by the City. FHP shall perform the following services to and for the City, downtown area property owners, business owners, and potential investors:

Organization:

- Provide input, advice and guidance to City staff, boards and commissions, as well as City Council on problems, issues, concerns and proposals that would affect the downtown area.
- Interface with other agencies, organizations and projects that are working on projects that may impact the downtown area.
- Seek to find resolution to problems, issues and concerns that may arise between organizations, property owners, business owners, governmental agencies and the community in general, which may affect the welfare of the downtown area.

Promotions and Marketing:

- Seek to provide the public with new and accurate information on the conditions, proposals, current projects and activities within the downtown area.
- Attract people to the downtown area through special events and activities
- Assist in promoting the business and services that are offered in the downtown area.
- Work to heighten the downtown image and provide a sense of excitement to the area.
- Promote the downtown as a place to Live, Work, Play and Learn.

Design and Planning:

- Manage the City's Façade Grant Program.
- Provide for long term vision development and planning recommendations for the downtown area, utilizing the knowledge base of FHP along with seeking the ideas and views of stakeholders within the area.
- Recommend or sponsor various downtown visual improvement programs
- Provide review, recommendations and assistance to the various city departments involved in downtown planning, infrastructure and maintenance.

Economic Development and Restructuring:

- Meet with new business prospects and assist with business analysis, site location and provide technical assistance for start-up.
- Develop conceptual ideas and plans for new development opportunities within the downtown area and present these ideas to potential investors and/or developers.
- Manage a revolving land purchase program to acquire important parcels and needed for assemblage of property for significant projects.
- Seek investors or developers for potential developments in the downtown area that are consistent with the City's vision for the area.
- Accept donations of downtown property when the opportunity is available. Such property will then be marketed for new investment and redevelopment.
- Provide potential developers or investors due diligence assistance, such as, but not limited to, market analysis, demographic information, mapping, development options, regulatory research and project coordination with local officials.

General Assistance:

- Provide for the professional management of various programs and projects that may be initiated by FHP and/or funded through city grants.
- Other services that may be required and agreed to between FHP and the City.

All of the above referenced services shall be performed in a non-partisan manner, with the general health, safety and welfare of the citizens of the City at its core. The ability to perform these services will be limited to the available resources, both financial and personnel, of FHP. The specific allocation of those resources shall be determined as needed by the Executive Director and Board of Directors of FHP.

3. PROGRAM GOALS. For the Fiscal Year, FHP identifies the following program goals, which are viewed as targets for quantitative measurement. Due to the changing economic environment of the downtown area, along with limited resource of staff, priorities are subject to change.

- A. Business Prospects: Meet with twenty (20) prospective businesses, either existing or start-up interested in a possible downtown location.
- B. Develop conceptual plans and/or programs for three (3) potential mixed-use projects within the downtown area and market these plans to potential private investors.
- C. Provide due-diligence assistance to five (5) potential developers/investment groups who are considering downtown projects, either new construction or renovation.
- D. Continue to provide assistance, coordination and advice on the implementation of public/private development around the City's Multi-Use Stadium and its development agreement with Elliott Sidewalk Communities.
- E. Provide design and development guidance to the City for potential public projects within the downtown area or vicinity.
- F. Review and comment on any city ordinance or policy change proposed for downtown and to offer potential changes when deemed appropriate.
- G. Sponsor or Co-Sponsor two (2) downtown events for the purpose of bringing activity, excitement and visibility to the area.
- H. Assist in the marketing of other events and activities that are being held in the downtown area.
- I. Participate with other organizations or agencies on potential downtown projects.
- J. Provide the public with information on current conditions, activities and plans for the downtown area; including,
 - Annual Public Meeting
 - Social Media promotion of the downtown area.
 - Operation of an information Web Page
 - Distribution of Press Releases on new businesses and activities
- K. Present to the city a list of capital needs envisioned for the downtown within the next ten years. This list will include the rationale, priorities and estimated cost.
- L. Seek solutions or abatement to current problems or issues effecting downtown
- M. General Economic Development. Assist with or facilitate the opening or development of the following within the Fiscal Year:
 - 20- new residential units
 - 4-new restaurants
 - 4-new retail businesses
 - \$30 Million in new investment

4. CONFIDENTIALITY. It is hereby understood, by both parties, that during the execution of the above referenced services, FHP and its employees, while providing economic development services, may need to provide such services on a strictly confidential basis, as desired or requested by their clients, both public and/or private. Any information, data, instruments, documents, studies or reports given to or performed for clients by FHP or its staff shall be kept as confidential and not divulged or made available to any individual or

organization, including members of the FHP Board of Directors, City management or City Council, without the prior approval of its client or as may be required by the North Carolina Public Records Act, Chapter 132 of the North Carolina General Statutes.

5. GENERAL REPORTING. FHP shall submit a report at the end of the Fiscal Year that discusses the progress made in achieving these goals as well as a general discussion of how FHP has fulfilled its “Scope of Services”. FHP shall prepare this report in written form, as well as make a presentation to City Council if requested. FHP shall make any other reports or updates to the High Point City Council as may be needed or requested.

6. FINANCIAL REPORTING. FHP shall provide to the City a quarterly financial report of both program and project activity. FHP shall provide the City with an annual audit of its finances following its year end.

7. INDEMNIFICATION. To the fullest extent permitted by law, FHP shall indemnify, defend, and hold harmless the City and the City’s officials, employees, and agents from and against any and all claims, losses, damages, fines, penalties, royalties, obligations, liabilities, and expenses, including but not limited to reasonable attorneys’ fees to the extent that they arise from actual or alleged:

- A. Breach of contract, negligence or willful misconduct by FHP or any of its agents, employees, or subcontractors, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness, or disease to any person(s) or damage to or destruction of any property whether real, personal, or intangible, and including data and other intellectual property;
- B. Violation of any federal, state, or local law, ordinance, rule, regulation, guideline, or standard by FHP or its agents, employees, or subcontractors, or by any service, product, or deliverable provided under this Agreement; and
- C. Violation, misappropriation, or infringement of any copyright, trademark, patent, trade secret, or other proprietary rights with respect to any services, products, or deliverables provided under this Agreement.

The provision of this Agreement regarding indemnity will survive the expiration or termination of this Agreement.

8. INSURANCE. FHP shall purchase and maintain, during the life off this Agreement, with an insurance company acceptable to the City and authorized to do business in the State of North Carolina, the following insurance:

- A. Automobile Liability
 - 1) Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit each occurrence/aggregate.

B. Commercial General Liability

- 1) Bodily injury and property damage liability as shall protect FHP and any subcontractor performing work under this Agreement from claims of bodily injury or property damage which arise from operation of this Agreement whether such operations are performed by FHP, any subcontractor or any person directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products/completed operation, personal injury liability and contractual liability assumed under the indemnity provision of this Agreement.

C. Workers' Compensation Insurance

- 1) Worker's compensation insurance in statutory limits required by law.

FHP shall not commence any services in connection with this Agreement until it has obtained all of the foregoing types of insurance and such insurance has been approved by the City. FHP shall not allow any subcontractor to commence services on its subcontract until all similar insurance required of the subcontractor has been obtained and approved.

The City shall not be liable for any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of FHP and/or the subcontractor providing such insurance.

The City shall be named as additional insured under the commercial general liability insurance for operations and services rendered under this Agreement. Certificates of all required insurance shall be furnished to the City within fourteen (14) calendar days after execution of this Agreement and prior to commencing any work. Certificates of Insurance shall contain the provision that the City will be given thirty (3) days written notice of any intent to amend or terminate by either the insured or the insuring company.

9. TERMINATION. Either party may terminate this agreement upon thirty (30) days notice with or without cause. If terminated without cause, FHP is entitled to keep a prorated share of grant funds calculated based on the portion of the Fiscal Year that is prior to the effective date of termination.

10. 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 Service Provider at the following addresses:

Notice to the City:

Address for hand-delivery or mailing:

**The City of High Point
City Managers Office
P.O. Box 230
High Point, NC 27260**

Notice to FHP:

Address for hand-delivery or mailing:

**Forward High Point, Inc.
ATTN: _____
164 South Main Street
High Point, NC 27260**

A notice shall be deemed received by the party to whom it is sent: (a) in the case of hand-delivery or delivery by overnight courier messenger or registered or certified U.S. mail, postage prepaid, return receipt requested, on the date of delivery of the notice to the party; and (b) in the case of facsimile transmission, on the date of the transmission by the sending party.

The addresses listed above with regard to the receipt of notice may be changed at any time by a party through the provision of notice of the change in accordance with this Section. Any change shall become effective on the date the notice of the change is deemed received by the party to whom it is sent.

11. MISCELLANEOUS.

A. Governing Law. The Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina (without giving effect to the principles thereof relating to conflicts of law).

B. Successors and Assigns. The Agreement shall be binding upon the parties, their successors and permitted assigns. Neither the City nor the Service Provider shall assign, sublet or transfer any interest in the Agreement without the prior written consent of the other party, which may be withheld for any reason.

C. Minor Changes in the Services. The City and the Service Provider agree that the City is entitled to request minor changes in the Services to be provided by the Service Provider under the Agreement, and that the Service Provider will provide such revised services requested by the City. Compensation relating to any such revision shall be based upon agreement between the City and the Service Provider, or through the claim resolution process set forth herein. The Service Provider may not withhold performance of a minor requested

change to the Services on the ground that an agreement regarding compensation relating to the change has not been reached.

Any changes or modifications of the Services, as well as any other revisions to the Agreement, shall be reduced to writing, dated, executed and made part of the Agreement.

D. Disclosure. The Service Provider agrees that it shall make no statements, press releases or publicity releases concerning the Agreement or the provision of the Services, or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished with regard to the Agreement or the provision of the Services, without first notifying the City and securing its consent in writing. The City may withhold its consent for such disclosure for any reason. The Service Provider also agrees that it shall not publish, copyright or patent any of the data furnished to it in relation to the Agreement.

E. Conflict. In case of a conflict between the provisions of the Agreement and the provisions of any attachment or other document referenced by or incorporated into the Agreement, the provisions of the Agreement shall prevail. Any terms and conditions or similar provisions submitted by the Service Provider shall not be part of the Agreement unless agreed upon in writing by the City. If such terms and conditions or other provisions are submitted by the Service Provider and agreed upon by the City, the provisions of the Agreement shall prevail in the event of a conflict between the provisions of the Agreement and the terms and conditions or other provisions submitted by the Service Provider.

F. Captions. The captions contained in the 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.

G. Severability. 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.

H. No Waiver. 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.

I. Counterparts. The Agreement may be signed in any number of counterparts, and each counterpart shall represent a fully executed original as if signed by each of the parties. Facsimile signatures shall be deemed as effective as original signatures.

J. E-Verify. Under North Carolina law, the E-Verify requirement applies to private employers doing business in this state that has 25 or more employees working in this state. If contractors are individuals who are self-employed (i.e., one employee), or with a business with less than 25 employees, that individual/business is not subject to the E-Verify requirements.

Since it is the City's responsibility to comply with E-Verify, the Consultant will be required to submit the completed E-Verify affidavit at execution of this Contract.

STATE OF NORTH CAROLINA
CITY OF HIGH POINT
E-VERIFY AFFIDAVIT

I, _____ (the individual attesting below), being duly authorized by and on behalf of _____ (the entity bidding on project hereinafter "Employer") after first being duly sworn hereby swears or affirms as follows:

1. Employer understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with NCGS §64-25(5).

2. Employer understands that Employers Must Use E-Verify. Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a).

3. Employer is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. (mark Yes or No)

a. YES _____, or

b. NO _____

4. Employer's subcontractors comply with E-Verify, and if Employer is the winning bidder on this project Employer will ensure compliance with E-Verify by any subcontractors subsequently hired by Employer.

This ____ day of _____, 20____.

Signature of Affiant
Print or Type Name: _____

State of _____ County of _____

Signed and sworn to (or affirmed) before me, this the _____

day of _____, 20____.

My Commission Expires:

Notary Public

(Affix Official/Notarial Seal)

Signature Page for Incorporated Firms

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed in 4 original copies on the day and year first above written.

FORWARD HIGH POINT, INC.

By: _____

Name above (Typed or Printed)

Title: _____

Street Address _____

City/State _____

ATTEST

In witness whereof, said corporation has caused this instrument to be executed by its President and attested by its

Secretary this the _____ day of _____, 20____.

Corporate Name

(SEAL)

By: _____
President (Signature)

Attest: _____
Secretary (Signature)

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledge that he/she is the Secretary of Forward High Point, Inc. a 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 President, sealed with its corporate seal and attested by him/her as its Secretary.

Witness my hand an official seal or seal, this the _____ day of _____, 20____.

(Notary Public)

(SEAL/STAMP)

My Commission Expires: _____

CITY OF HIGH POINT, NORTH CAROLINA
The City

P O Box 230, High Point, NC 27261
Address

Lisa Vierling, City Clerk

By: _____
Mayor Jay W. Wagner

APPROVAL BY CITY ATTORNEY

Approved as to form:

_____ Date: _____
JoAnne L. Carlyle, City Attorney

APPROVAL BY FINANCE OFFICER

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

_____ Date: _____
Bobby Fitzjohn, Director of Financial Services