

NORTH CAROLINA)
) **GOLER COMMUNITY DEVELOPMENT CORPORATION**
) **HYDROPONICS PROGRAM GRANT AGREEMENT**
FORSYTH COUNTY)

THIS GOLER COMMUNITY DEVELOPMENT CORPORATION HYDROPONICS PROGRAM GRANT AGREEMENT, made this 14th day of September, 2016 by and between the **CITY OF WINSTON-SALEM**, a North Carolina municipal corporation (hereinafter referred to as the City), and the **GOLER COMMUNITY DEVELOPMENT CORPORATION**, a North Carolina Non-profit Corporation (hereinafter referred to as “Goler”).

WITNESSETH:

WHEREAS, Goler is a 501(c)(3) organization that specializes in urban real estate development, economic entrepreneurship, employment development and quality of life initiatives for families throughout Winston-Salem; and

WHEREAS, Goler is interested in developing a hydroponics and aquaponics job training facility to help train hard to place individuals while simultaneously providing fresh fruit and vegetables to a food desert in the community (Collectively referred to hereinafter as the “Hydroponics Project”); and

WHEREAS, Goler has identified a site of approximately 3.0 acres on the southwest corner of Kimberley Park near the intersection of Northwest Crawford Place and Pittsburgh Avenue (“Kimberley Park Site”) that meets its needs; and

WHEREAS, Goler will enter into the appropriate lease with the City for the Kimberley Park Site for the Hydroponics Project; and

WHEREAS, the City has also approved a one-time grant in the amount of \$962,000 comprised of \$485,000 from the 2014 GO Bond Economic Development to be used for site acquisition/construction, equipment and pre-development costs related to such and \$477,000 for administrative/operation and marketing costs for the first two years of operation; and

WHEREAS, the City will monitor the use of these funds to ensure that they are disbursed in accordance with the Winston-Salem City Council Resolution adopted on August 15, 2016 (“Resolution”), attached as **Exhibit A**.

NOW, THEREFORE, and in consideration of the covenants herein contained, the City and Goler do hereby agree as follows:

1. **Statement of Work, Budget and Term**

- a. Goler agrees to construct or cause to be constructed within the Kimberley Site a Hydroponics and Aquaponics facility and to operate and maintain said facility (“HA Facility”) and the Hydroponics Project as described above with the assistance of a one-time grant assistance from the City in an amount not to exceed **NINE HUNDRED SIXTY-TWO THOUSAND AND 00/100 DOLLARS (\$962,000.00)** (hereinafter referred to as “Grant”) upon the terms and conditions set forth herein.
- b. The proceeds of said Grant shall be expended in accordance with: (i) the Budget as set forth in **Exhibit B**, attached to this Agreement and incorporated herein by reference; (ii) the Work Plan, Bench Marks, Conditions and Restrictions attached to this Agreement and incorporated herein as **Exhibit C**; and (iii) with all applicable federal, state and local laws. Any and all alterations in the restrictions and conditions of the grant of the funds herein shall be subject to prior review and written approval of the City. Goler covenants and agrees to expend the Grant and perform the services in consideration of the Grant in accordance the Budget, the Work Plan, Bench Marks, Conditions and Restriction, all applicable laws and Resolution.
- c. Grant funds shall be disbursed in accordance with the Disbursement Schedule set forth in **Exhibit D**, attached to this Agreement and incorporated herein. All grant funds shall be disbursed by December 31, 2020 in accordance with the Resolution. Otherwise, the City may recapture and redirect said grant funds without any further obligation to Goler.
- d. Except as otherwise provided, Goler, prior to initial disbursement of any funds under this Agreement, shall submit copies of the following documents, as applicable to organization: (i) its most recent IRS Form 990 as submitted to the Internal Revenue Service (IRS); (ii) By-Laws; (iii) Articles of Incorporation; (iv) Procurement Policies, Accounting Procedures, (v) IRS 501(c) (3) designation letter and (vi) Board roster. During the term of this Agreement, Goler shall submit to the City any updates to items listed in d(i) through (vi). Goler’s audit report performed by a certified public accountant and audit management letter shall be submitted to the City within 30 days of receipt of the auditor’s report by Goler, but not later than nine months after the end of the audit period. Goler’s tax exempt status must be maintained throughout the term of the Agreement and the companion lease and the Form 990 submission to the IRS must be made on the schedule required by the IRS.
- e. The term of this Agreement shall run consistent with the companion Lease Agreement. An uncured default under the Lease Agreement shall constitute a default under this Grant Agreement.
- f. To the extent the cost of the Hydroponics Project exceeds the Grant funds, Goler shall be responsible for funding or procuring non-city funds for the additional cost. The City shall not be responsible for the additional cost.

2. **Records, Reports and Evaluation**

- a. GOLER shall establish and maintain sufficient records to enable the City to determine that the Grant has been spent in accordance with this Agreement. Determination of sufficiency of records and report data shall be determined by the City. GOLER shall maintain original files and provide, as requested, copies of contracts, invoices and other supporting documentation for which Grant funds were expended.
- b. GOLER shall retain all records for _____ years after the expiration of this Agreement or any extension hereto “(Regular Period of Retention”). However, if any litigation, claim, negotiation, audit, or other action has commence before the expiration of the Regular Period of Retention, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the Regular Period of Retention, whichever is longer.
- c. The City reserves the right to require a certified audit pertaining to the use of the grant funds. The City may perform the audit through the use of its staff.
- d. Goler agrees that the City shall have access to the records and premises of Goler at all reasonable times, as the City may determine.

3. **Suspension and Termination**

a. The City may suspend or terminate the payment of the Grant in whole or in part for any violation of this Agreement. Suspension or termination may be effected for the following reasons as determined by the City, but not limited to these reasons:

- (1) Improper use of grant funds;
- (2) Failure to comply with the terms and conditions of the Agreement;
- (3) Fail to comply with the terms of the companion Lease Agreement;
- (4) Submission to the City of reports which are incorrect or incomplete in any material respect;
- (5) Uncontrollable circumstances, rendering the carrying out of this Agreement improper or infeasible.

In addition, the City may suspend or terminate payment of grant funds if Goler fails to make satisfactory progress toward meeting the services which are the subject of this Agreement. The determination of whether satisfactory progress has been made shall be in the sole discretion of the City. If for any reason the payment of grant funds is suspended or terminated, the Goler agrees to promptly remit to the City any payments previously received by the Goler which the City deems to have been paid and received in violation of this Agreement.

An uncured default under the companion Lease Agreement between the City and Goler shall constitute grounds for suspending or terminating this Agreement, any outstanding payments and recapturing the Grant funds.

- b. Upon the termination of this Agreement, Goler shall transfer to the City any unexpended Grant funds on hand at termination and any accounts receivable attributable to the use of said Grant funds.
- c. Termination of this Agreement may occur for reasons described herein or in attachments hereto. The City may execute an extension of this Agreement in its discretion and in accordance with such additional conditions as it may require.

3. **Assignment**

This Agreement and the grant funds which are the subject of this Agreement are expressly non-assignable without the prior written consent and approval of the City.

4. **Ownership of property purchased with Grant funds**

Except as otherwise noted herein, non-expendable property purchased under this Agreement shall remain the property of the Grantee, unless the attached conditions or budget provide that such property shall become the property of the City.

5. **Employees and subcontractors**

Goler shall make a good faith effort to hire minority and women applicants for employment from the Neighborhood Revitalization and Stabilization Area ("NRSA") in Winston-Salem/Forsyth County. Documentation of such efforts in a manner and on a form acceptable to the City shall be provided by Goler before the end of the fiscal year in which grant funds were received. Failure to provide such documentation may impact the Goler's eligibility for grant funds for future projects. If Goler uses grant funds to pay for services, repair or construction work, Grantee is strongly encouraged to hire minority and women service providers and contractors from the Winston-Salem/Forsyth County area. Goler shall keep track of said minority and women contractors and service providers using the form attached and incorporated herein as **Exhibit E**.

6. **Other obligations to the City**

Goler acknowledges that the City will make no payment to Goler so long as there is an outstanding debt or obligation due by Goler to the City. Goler hereby agrees that any debt it owes the City will be offset against any payments otherwise due Goler by the City under this Agreement.

7. **Suspension and Debarment**

Goler hereby certifies that neither it, nor its agents or subcontractors: (i) are presently debarred, suspended, proposed for suspension or debarment from contracting by any Federal or State Department or Agency, or (ii) have been declared ineligible or voluntarily excluded from contracting by or with any Federal or State Department or Agency. Any contract entered into with a contractor or subcontractor that has been debarred or suspended, declared ineligible or voluntarily excluded from contracting with or by any Federal or State Department or Agency may be terminated at the sole discretion of the City.

(8) **E-Verify Compliance**

Where applicable, Goler shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if the Goler utilizes a subcontractor, Goler shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statute. A violation of this provision or the E-Verify requirements shall be just cause for the City to terminate this contract.

(9) **Iran Divestment Act**

Goler hereby certifies that it is not on the North Carolina State Treasurer's list of persons engaging in business activities in Iran, prepared pursuant to NCGS § G.S. 147-86.58, nor will Goler utilize on this Agreement any subcontractor on such list.

(10) **Release and Indemnity:**

Goler hereby releases and forever discharges the City, its agents, elected officials, officers and employees, from any and all claims, demands, expenses, costs and liabilities of any kind or nature directly or indirectly related to any personal injury and/or property damage arising out of the performance of this Agreement, except those claims that result from the sole negligence of the City or a City employee or officer acting within the scope of the employment. Goler shall indemnify, defend, and hold harmless the City, its agents, elected officials, officers and employees from and against any and all claims, demands, expenses, costs and liabilities of any kind or nature, directly or indirectly caused by, arising out of, or related to the intentional, negligent or reckless acts or omissions of Goler, its agents, officers and employees in the performance of this Agreement.

(11) **Insurance:**

During the performance of this Agreement and the Hydroponics Project described herein, Goler shall maintain Commercial General Liability Insurance to protect Goler against any and all injuries to third parties, including personal injury and property damage, and special and consequential damages, resulting from any negligent action, omission or operation by Goler, or in connection with the services described herein. This insurance shall provide bodily injury and property damage limits of not less than \$1,000,000 per occurrence, respectively. Said insurance shall name the City as an additional insured and provide that said coverage is primary to any other coverage the City may possess. Where required,

Goler shall also maintain Workers' Compensation Insurance as required by law. Evidence of all required insurance policies shall be provided to the City's Risk Manager upon execution of the Agreement.

(12) Waiver of Default

Failure of a party to this Agreement to exercise any right, remedy, power or privilege hereunder shall not operate as a waiver of any current or future default. Further, a waiver of one provision of this Agreement is not a waiver of all or future provisions of this Agreement.

(13) Severability

If any court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, then (a) such holding shall not invalidate or render unenforceable any other provision of this Agreement, unless such provision is contingent on the invalidated provision; and (b) the remaining terms hereof shall, in such event, constitute the parties' entire agreement.

(14) Relationship of Entities

Nothing contained herein will be construed as establishing an employment relationship, partnership, joint venture, or agency agreement among the Parties.

(15) Notice:

Notices hereunder shall be deemed to be given if in writing and when (a) personally delivered with written acknowledgement of delivery from the person receiving such notice; or (b) one business day after being deposited with an overnight commercial courier (such as, but not limited to, Federal Express with signature release required), at the following addresses:

For notice to the CITY:

Lee Garrity
City Manager, City of Winston-Salem
101 N. Main Street
Winston-Salem, NC 27101
Tel. No. 336. 734-1301

WITH COPY TO:

Angela I. Carmon
City Attorney
101 N. Main Street, Suite 132

Winston-Salem, NC 27101
Tel. No. 336. 747-7404

For notice to GOLER:
Michael Suggs, Executive Director
889 N. Liberty Street

Winston-Salem, N.C. 27101

WITH COPY TO:

Fred Phifer
Chairman of the Board
4802 Barkas Rd.
Winston Salem NC 27106

(16) **Entire Agreement; Amendment; Authority**

This Agreement is the entire agreement between these parties as to the subject matter referenced herein, without regard to any prior agreements, understandings or undertakings (whether oral, written, electronic or otherwise), and no amendment may be made to this Agreement except with the prior written consent of all parties. The parties, and each person executing this Agreement on behalf thereof, represent and warrant that they have the full right and authority to enter into this Agreement, which is binding, and to sign on behalf of the party indicated, and are acting on behalf of themselves, their constituent members and the successors and assigns of each of them.

(17) **Binding Obligation**

The City and Developer and their respective successors, assigns, and legal representatives accept full legal responsibility hereunder for compliance with all covenants, agreements and obligations of this Agreement

(18) **Applicable Law; Construction**

This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to any construction arising from the application of conflicts or choice of law principles, and without regard to any construction arising by virtue of the negotiation or the persons who drafted this Agreement. References to the City shall refer to, bind and include its representatives, elected body and members of such, and the successors and assigns of each of them, in each case in their official capacities.

(19) **Adverse Change**

In the event that a court of competent jurisdiction holds that a provision or requirement of this Agreement violates any applicable law, each such provision or requirement shall be

replaced with a revision which accomplishes the purposes outlined herein and shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Agreement, not contingent thereon, shall remain in full force and effect.

(20) Notice of Default/Right to Cure

Except as otherwise provided, if either party defaults on any of its obligations under this Agreement, then the non-defaulting party shall send a 30 calendar day written notice of default to the defaulting party. The defaulting party may respond in writing to the notice within said timeframe. If the default is not cured within 30 calendar days, the non-defaulting party may pursue all remedies available in law and equity. The City may also consider terminating this Agreement.

(21) Compliance with Law

(i) It is the expectation of the City that Goler will comply, and Goler agrees to comply, with all applicable federal immigration laws in its hiring and contracting practices relating to services covered by this Agreement.

(ii) Goler shall comply with all applicable federal, state, and local laws that may be required to carry out their respective obligations to be performed under this Agreement.

(iii) Goler shall comply with all applicable employment laws, including but not limited to the Americans with Disabilities Act (ADA), as may be amended from time to time, the State of North Carolina Occupational/Safety and Health Act (OSHA), and the State and Federal Equal Opportunity laws, as well as the regulations promulgated thereunder.

(22) Statutory Authority

N.C.G.S. 160A-456 authorizes the use of grant funds for the purpose set forth herein and N.C.G.S. 160A-272 and 279 authorize the companion leases to be executed consistent with the council adopted resolutions.

(23) Exhibits:

The attached Exhibits are:

- a. Exhibit A-The Winston-Salem City Council Resolution;
- b. Exhibit B-The Budget;
- c. Exhibit C-Work Plan, Bench Marks, Conditions and Restrictions
- d. Exhibit D- Disbursement Schedule
- e. Exhibit E-M/WBE form for contractors and subcontractors.

These exhibits are incorporated herein by reference and shall have the same force and effect as if

set forth herein.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its behalf and Goler has caused the same to be duly executed in its behalf as of the date first above written.



ATTEST:

[Signature] (SEAL)
Secretary

GOLER COMMUNITY
DEVELOPMENT CORPORATION

By: [Signature] (SEAL)
President

CITY OF WINSTON-SALEM

ATTEST:



[Signature] (SEAL)
Secretary Melanie Jumper

[Signature] (SEAL)
City Manager
Lee D. Garrity

Approved as to form and legality.

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

This the 21st day of September, 2016.

[Signature]
Angela I. Carmon, City Attorney

This the 20th day of September, 2016.

[Signature]
Lisa Saunders, Chief Financial Officer

EXHIBIT A
WINSTON-SALEM CITY COUNCIL RESOLUTION

EXHIBIT B

PURPOSE, BUDGET, RESTRICTIONS AND ADMINISTRATIVE PLAN

1. **Purpose of Grant Award**--The grant award is to provide Goler with partial funding to construct and maintain a hydroponics and aquaponics facility and to create a job training facility/environment to help train hard to place individuals while simultaneously providing fresh fruit and vegetables to a food desert in the community.

2. **Budget (Attached)**

The City may request documentation to support all expenditures.

Goler CDC - Kimberry Park Project
 Hydroponics - Healthy Food Economic Development Facility
 Project Budget 2016-2019

SOURCE	City of Winston Salem
Total Revenue sources	\$ 961,790

EXPENSES:

CONSTRUCTION:	
Construction/Up-tilt**	\$ 350,000
Predevelopment/Grading/Fencing/ Retaining Wall	\$ 100,000
Technical Consultants - construction	\$ 10,000
Hydroponics/Aquaponics Consultant	\$ 25,000
Subtotal - Construction	\$ 485,000
Administrative Expenses	\$ 152,500
Operational Expenses	\$ 316,790
Market Feasibility Study/Business Plan	\$ 7,500
<i>Salaries - Administrative Overhead</i>	<i>116,599</i>
TOTAL EXPENSES	\$ 961,790
Excess revenue (or under)	\$ -

NOTES:

** Includes purchase of structure, equipment and shipping charges.

EXHIBIT C
Work Plan, Bench Marks, Conditions and Restrictions (“Work Plan”)

Goler’s Work Plan, includes at a minimum the following:

1. Hire Hydroponics/Aquaponics Consultant within 90 days of executing agreement;
2. Complete Marketing Feasibility Study by January 1, 2017;
3. Begin construction/installation of the HA Facility, structures and raised community garden beds by July 1, 1017;
4. Complete construction/installation of the HA Facility, structures and raised community garden beds by January 1, 2018. This work item/bench mark also includes the following tasks:
 - a. Identify, select, implement and maintain correct environment (relative humidity, air circulation, and temperature) for the HA Facility;
 - b. Identify, select, implement and maintain the appropriate water for the HA Facility;
 - c. Identify, select, implement and maintain the appropriate medium for such HA Facility;
 - d. Identify, select, implement and maintain the appropriate nutrients for the HA Facility;
 - e. Identify, select, implement and maintain the appropriate fish for the HA Facility;
 - f. Identify, select, implement and maintain appropriate procedures and protocols that, at a minimum, address planting, harvesting, post-harvesting, waste disposal, scheduling and pest management. Manage daily the hydroponics and aquaponics system; and

- g. Identify markets and transportation methods for distributing the products generated by the HA Facility.
- 5. Hire FTE staff by January 1, 2018
- 6. Beginning 2018, host at least two community events per year relative to healthy eating and food preparation until the expiration of the companion Lease Agreement.
- 7. Goler shall maintain or make sure the HA Facility is maintained in compliance with all applicable codes and in a condition acceptable to the City. Goler shall: (i) allow or require any subcontractor/sub-lessee to allow employees/workers to use the restroom; (ii) provide or require its subcontractor/sub-lessee to provide office space for the in the HOPE building and (iii) provide programming for the community relative to healthy eating and food preparation.

EXHIBIT D

Disbursement Schedule

Funds shall be disbursed based upon the following schedule and completion of the associated tasks, where required:

A. Construction:

1. \$350,000- Funds available after execution of Agreement and will be paid as needed by Goler upon receipt of invoice for completed work;
2. \$100,000- Funds to be utilized by the City for pre-construction costs and site preparation costs associated with the entire site;
3. \$25,000- Consultant, available after execution of Agreement;
4. \$10,000- Construction, available after execution of Agreement;

B. Administration:

1. Administrative \$152,500 available in approximately 1/3 draws with the first payment being available after execution of the Agreement.
2. Operational \$316,790 available upon the completion of the building.
3. Market Study- Available after execution of Agreement-\$7,500.

EXHIBIT E

**GOLER HYDROPONICS AND AQUAPONICS FACILITY
PAYMENTS TO LOCAL AND MINORITY CONTRACTORS**

Prime Contractor/Architect: _____
 Address & Phone Number: _____
 Project Name: _____
 Pay Application Number: _____ Period _____

The following is a list of payments to be made to local and minority business contractors on this project for the above mentioned period.

<u>Firm Name/Contact/Contact #</u>	<u>Category</u>	<u>*Minority Company (Y or N)</u>	<u>Winston-Salem Pay Amount</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

*Minority Categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**), American Indian (**I**), and Female (**F**),

I, _____, hereby certify that the above information is true and accurate. Providing false information shall be considered a breach of the Lease and Grant Agreement.

Date: _____

Approved/Certified By: _____

Name : _____

Title: _____

Signature: _____

******THIS DOCUMENT MUST BE SUBMITTED QUARTERLY TO WINSTON-SALEM ******