

## GRANT AGREEMENT

This Grant Agreement (the “Agreement”) between Envision Charlotte, a nonprofit corporation organized under the laws of North Carolina (“Grantee”) and the City of Charlotte, a North Carolina municipal corporation (the “City”) ( and collectively, the “Parties”) is made effective as of May\_\_, 2018 (the “Effective Date”).

### WITNESSETH:

WHEREAS, Grantee and the City are committed to making Charlotte a global leader in urban sustainability to improve the quality of life and economic opportunities for all Charlotteans;

WHEREAS, Grantee is a public-private collaborative that leads Charlotte’s progress as a global Smart City through innovations that strengthen economic competitiveness, environmental sustainability and positive community impacts.

WHEREAS, Grantee uses Charlotte’s urban core as a living laboratory to foster innovation and first-of-their kind programs that can be measured, scaled and replicated beyond the urban core and in other communities;

WHEREAS, the Parties recognize there is a unique opportunity to create a physical, community space where public-private-plus partnerships can flourish in a structured, innovative, and creative way to create a “Circular Economy” innovation center.

WHEREAS, the Circular Economy is defined as an alternative to a traditional linear resource economy (make, use, dispose) in which we keep resources in use for as long as possible, extract the maximum value from them while in use, then recover and regenerate products and materials at the end of their life.

WHEREAS, Envision Charlotte, UNC - Charlotte and the City of Charlotte will be co-located in the facility and use the Circular Economy as the platform to push entrepreneurship, innovation and economic mobility that will benefit the entire city. In addition, to the listed entities this innovation center will have space and services for community gatherings that will tie into the Circular Economy.

WHEREAS, the City recognizes that it owns a suitable facility, referred to as the “Horse Barn,” located at 932 Seigle Avenue, to become the home of said innovation center.

WHEREAS, the Envision Charlotte will enter into a five-year lease under which it will lease the Horse Barn from the City in furtherance of their mutual goal (the “Lease”);

WHEREAS, the City desires to further support the creation of the innovation center by contributing up to \$500,000 to Grantee for its efforts to renovate the Horse Barn;

WHEREAS, as a condition of receiving the City’s funds, Grantee has agreed to invest the City’s contribution to begin renovation of the Horse Barn; and

WHEREAS, as a condition of receiving the City's funds, the Grantee has agreed to provide to the City periodic reports and audits of Grantee's progress in renovating the facility and its financial stewardship of the City's contribution.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the Parties agree as follows:

#### AGREEMENT

1. The City's Obligations. The City agrees to make up to a \$500,000 contribution to Grantee (the "City Contribution") no later than June 15, 2018, on the condition that such funds be used solely for renovation of the Horse Barn under the terms set forth in Agreement (the "Project"). Notwithstanding anything contained herein to the contrary, the City shall have no obligation to contribute any funds to the Project or to Grantee in excess of the City Contribution, absent execution by the City of a written amendment to this Agreement.
2. The Lease. It is intended that this Agreement go into effect on the same date as the Lease. Notwithstanding anything contained herein to the contrary, this Agreement gives Grantee no right to access the Horse Barn for any reason prior to the effective date of the Lease. All releases of liability and limitations of liability set forth in the Lease shall apply to this Agreement also. Grantee's obligations under the Lease are incorporated into and made part of this Agreement by reference, including without limitation Grantee's obligations regarding indemnity of the City and providing insurance. Any breach of the Lease by Grantee shall also constitute a breach of this Agreement.
3. Compliance With North Carolina Requirements for Use of Public Funds in Design and Construction / Charlotte Business Inclusion. The City and Grantee will cooperate to ensure that all design, engineering, surveying, and construction firms and contractors that will perform work funded in whole or in part by the City Contribution are selected in compliance with North Carolina law. Grantee and the City's Charlotte Business Inclusion Office will jointly develop and agree to a plan to encourage participation by small, minority and women-owned businesses in the Project.
4. Conceptual Plan. The parties acknowledge that Grantee has engaged Metabolic to provide consulting services relating to implementing circular economy projects and measures in Charlotte, including programming concepts for the Horse Barn (the "Metabolic Agreement"). The City agrees that Grantee may use the City Contribution to fund work under the Metabolic Agreement, and to implement projects recommended by Metabolic, subject to the City Engineer's agreement that the projects will not negatively impact the structural integrity or functioning of the facility.
5. Renovation Plan. Promptly after the Effective Date, Grantee shall develop for written approval by the City Engineer a design plan for renovation of the Horse Barn (such plan in the form approved by the City being referred to as the "Renovation Plan"). The City Engineer will participate in selection of the design firm to develop the Renovation Plan, and will have approval rights as to the contract terms and firm selected. Once the City Engineer has approved the Renovation Plan, Grantee may not change it without the prior written approval of the City Engineer. Grantee may apply up to the entire City Contribution toward development of the Renovation Plan. The City and Grantee will co-own all intellectual property rights relating to the Renovation Plan.

6. Use of City Contribution. Grantee is authorized to spend the City Contribution on the Metabolic Agreement, projects recommended by Metabolic and development of the Renovation Plan (collectively, the “Approved Costs”) in such amounts as Grantee deems appropriate. Grantee may also apply the City Contribution to construct specific items in the Renovation Plan, subject to approval of each such item by the City Engineer (and upon approval such items shall also be deemed “Approved Costs.” The Parties acknowledge that aside from the funds applied to the Metabolic Agreement and development of the Renovation Plan, the City Contribution will be used only for projects recommended by Metabolic and renovations to the Horse Barn, including fixtures, and not for personal property such as furniture that does not become a fixture. Grantee shall use the City Contribution only for the Approved Costs.
7. Project Schedule. Prior to beginning construction, Grantee shall prepare for written approval by the City Engineer a proposed schedule for completion of the Renovation Plan (such Schedule in the form approved by the City Engineer being referred to as the Project Schedule). The City will not unreasonably delay or withhold consent, and consent will be presumed unless the City Engineer notifies Grantee in writing to the contrary within twenty (20) days after receipt of the proposed schedule. Grantee shall complete the Project in accordance with the Project Schedule.
8. City Approvals. The City Engineer may name a designee to exercise the approval rights granted to the City Engineer under this Agreement, and in such event each reference to the City Engineer shall be deemed to mean the person designated to exercise such rights. In exercising the approval rights granted under this Agreement, the City Engineer will not unreasonably delay or withhold approval. Approval of the City Engineer will be presumed unless the City Engineer notifies Grantee in writing to the contrary: (a) within seven (7) days for approvals relating to selection of the design firm or to the proposed contract terms for the design firm; and (b) within twenty (20) days for all other approvals, with the time period in each case beginning on the date the City receives a written request for approval and each applicable deliverable. The time period set forth in this Section shall take precedence over any provision in the Lease that may be in conflict.
9. Reporting. On the first of every month, starting on June 1, 2018, Grantee shall submit to the City Engineer the following written reports:
  - 9.1. A progress report that: (i) details progress on the Project and the Renovation Plan, including all tasks listed in the Project Schedule, (ii) identifies any renovations or tasks that have fallen behind schedule and what if any impact that may have to the Project Schedule or to the budget; and (iii) states how any such problems or deficiencies will be remediated.
  - 9.2. A financial report detailing all amounts spent toward completion of the Project, including without limitation, a breakdown of all Approved Costs spent, committed and remaining to be spent, and including but not limited to the City Contribution.
10. Compliance with Laws. Grantee and its subcontractors will comply with all local, state and federal ordinances, statutes, laws, rules, regulations and standards (“Applicable Law”) in completing the Renovation Plan, and all renovations and improvements made to the Horse Barn shall be in compliance with all Applicable Law. Grantee acknowledges that its indemnity obligations under the Lease shall cover without limitation any failure by Grantee or its subcontractors to comply with Applicable Law regarding the renovations and improvements contemplated by this Agreement.

11. Termination Without Cause. Either Party may terminate this Agreement with or without cause at any time on thirty (30) days prior written notice. In the event of termination, Grantee shall return: (a) all of the City Contribution that has not already been paid for Approved Costs or legally obligated for payment Approved Costs; and (b) any funds that were applied or obligated by Grantee for items other than Approved Costs.
12. Default. Without limiting any other termination rights set forth in this Agreement, either Party may terminate this Agreement for default if the other Party fails to cure a material breach within thirty (30) days after receipt of written notice that identifies the breach and the intent to terminate if not cured. Each of the following shall be deemed a material default of this Agreement not susceptible to cure, provided that the City may in its sole discretion elect to allow Grantee an opportunity to cure by notifying Grantee in writing of the duration of such cure period;
  - 12.1. Any application of the City Contribution by Grantee in a manner not authorized under this Agreement; or
  - 12.2. Any breach of the Lease that entitles the City to terminate the Lease.

If the City terminates this Agreement for default, Grantee shall immediately return all of the remaining City Contribution, without limitation of any right the City may have to recover the City Contribution in its entirety or any other right. The remedies set forth in this Agreement are cumulative and not exclusive, and may be exercised successively or concurrently, in addition to any other remedy available at law or in equity, or under the Lease.
13. Ownership of Improvements. Except to the extent otherwise set forth in the Lease, all renovations and other improvements made to the Horse Barn or otherwise to the “Premises” (as defined in the Lease) will be owned by the City, but will be maintained by Grantee during the term of the Lease under the terms set forth in the Lease.
14. Waiver. No delay or omission by the City to exercise any right, remedy or power it has under this Agreement shall impair or be construed as a waiver of such right, remedy or power. Furthermore, a waiver by the City of any breach or default under this Agreement shall not constitute or operate as a waiver of any succeeding breach or default.
15. No Third Party Rights. This Agreement is entered into by and between the Parties hereto for their exclusive benefit. The Parties do not intend to create or establish by this Agreement any third-party beneficiary status or rights, and no such third-party shall be entitled to enforce any right or obligation or enjoy any benefit created or established by this Agreement.
16. Publicity. Either Party may publish their relationship and mutual efforts in developing the innovation center but may not use the symbols or trademarks of the other Party without written permission.
17. Notices. Any communication between the Parties or notices permitted or required to be given hereunder shall be given in writing by personal delivery, facsimile, electronic mail or mailing the same, postage prepaid to the applicable contact at the address set forth below, or to such other addresses as either Party may indicate pursuant to this section:

For Envision Charlotte:  
Amy Aussieker  
Executive Director  
Envision Charlotte  
615 South College Street  
Charlotte, North Carolina 28202

For the City:  
Kim Eagle  
Assistant City Manager  
City of Charlotte  
600 East Fourth Street  
Charlotte, North Carolina 28202

18. Assignment. Neither Party may assign this Agreement without the prior written consent of the other. Any assignment attempted without the written consent of the other Party shall be void.
19. Commercial Non-Discrimination Policy. Grantee understands that the City has adopted a Commercial Non-Discrimination Policy as set out in Section 2, Article V of the Charlotte City Code, and agrees to comply with all applicable provisions of said policy in all material respects.
20. E-Verify. Grantee shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and shall require each of its subcontractors to so comply.
21. Site Access. The City shall provide the Grantee and the Grantee's employees, consultants, advisors, architects, engineers and other representatives with access to the Horse Barn and surrounding areas owned or controlled by the City sufficient for Grantee to perform its Renovation Plan development activities under Section 3. Grantee shall defend hold harmless and indemnify the City from and against all claims, damages, liabilities and expenses (including reasonable attorneys' fees and expenses), in any manner arising out of, related to, or resulting from the access provided to Grantee pursuant to this Section, provided, however, Grantee shall not be obligated to indemnify the City under this Section to the extent any such claims, damages, liabilities or expenses result from the negligence or intentional misconduct of the City, its employees or its representatives. The provisions of this Section 21 shall automatically expire and be of no further force or effect at such time as the Lease is fully executed and effective.
22. Limitation of Liability. Neither Party shall be liable to the other Party for any indirect, incidental, special, punitive or consequential damages of any kind. Grantee is not an agent or employee of the City and may direct and control its planting efforts in its own discretion. In addition to the Grantee's indemnification obligations under Section 21, Grantee shall hold harmless and indemnify the City against any claims against the City arising from Grantee's breach of this Agreement or from the negligence or intentional misconduct of Grantee, including reasonably attorney's fees.
23. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, excluding its conflicts of laws principles, and venue shall be proper in the State or federal courts located in Mecklenburg County, North Carolina.
24. Entire Agreement. This Agreement and the Lease constitute the entire agreement between the parties. They supersede all prior agreements, negotiations, representations and proposals, written or oral, and cannot be changed or modified absent a written amendment signed by both Parties.

To show their assent, the duly authorized representatives of the parties have signed on the following page.

**CITY OF CHARLOTTE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ENVISION CHARLOTTE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_