

FORSYTH COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: January 24, 2019

AGENDA ITEM NUMBER: 10

SUBJECT: RESOLUTION RATIFYING AND AUTHORIZING AN INTERLOCAL AGREEMENT WITH THE CITY OF WINSTON-SALEM, NORTH CAROLINA, TO PARTICIPATE IN THE FINANCING, OWNERSHIP, AND OPERATION OF A PARKING FACILITY ON CHESTNUT STREET AND FIRST STREET IN WINSTON-SALEM

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS: Recommend Approval

SUMMARY OF INFORMATION: See Attached

ATTACHMENTS: YES NO

SIGNATURE: *J. Dudley Watts, Jr. / AMS*
COUNTY MANAGER

DATE: January 22, 2019

**RESOLUTION RATIFYING AND AUTHORIZING AN INTERLOCAL AGREEMENT WITH THE
CITY OF WINSTON-SALEM, NORTH CAROLINA, TO PARTICIPATE IN THE FINANCING,
OWNERSHIP, AND OPERATION OF A PARKING FACILITY ON CHESTNUT STREET AND
FIRST STREET IN WINSTON-SALEM**

WHEREAS, under Article 20 of Chapter 160A of the North Carolina General Statutes as amended (the "Interlocal Act"), cities and counties are authorized to enter into interlocal cooperation undertakings with other local governments for the joint exercise of any power, function, public enterprise, right, privilege, or immunity of local governments in North Carolina; and

WHEREAS, Forsyth County, North Carolina, a political subdivision of the State of North Carolina (the "County") and the City of Winston-Salem, North Carolina, a municipal corporation organized under the laws of the State of North Carolina (the "City") desire to enter an Interlocal Agreement (the "Agreement") to jointly participate in a parking deck on Chestnut Street and First Street in Winston-Salem; and

WHEREAS, the purpose of the Agreement is to provide the terms of the relationship, between the County and the City with respect to financing, ownership and operation of a parking facility to provide approximately 660 spaces; and

WHEREAS, the County will own the Parking Facility and the City will have the right to park its vehicles in approximately 183 spaces, and approximately 101 spaces will be available for public parking, and the City and the County desire to share proportionally the responsibilities of payment of the amounts to construct, operate, and maintain the Parking Facility;

NOW, THEREFORE, BE IT RESOLVED that the Chairman or County Manager and Clerk to the Board are hereby authorized to execute the said City/County Interlocal Agreement, on behalf of Forsyth County, subject to a pre-audit certificate thereon by the Chief Financial Officer, where applicable, and approval as to form and legality by the County Attorney.

BE IT FURTHER RESOLVED that the Chairman, the County Manager and the Clerk to the Board are hereby authorized to execute the necessary documents, on behalf of Forsyth County, to operate the Parking Facility and receive the City Share equaling approximately 35.4% of costs associated with the development, construction and maintenance of the Parking Facility.

BE IT FURTHER RESOLVED that the Resolution ratifying interlocal cooperation between Forsyth County and the City of Winston-Salem is hereby spread upon the minutes of the Forsyth County Board of Commissioners.

Adopted this 24th day of January 2019.

NORTH CAROLINA)
)
FORSYTH COUNTY)

INTERLOCAL AGREEMENT

This **INTERLOCAL AGREEMENT** dated as of _____, 2019 (this “Agreement”), between Forsyth County, North Carolina, a political subdivision of the State of North Carolina (the “County”) and the City of Winston-Salem, North Carolina, a municipal corporation organized under the laws of the State of North Carolina (the “City”);

WITNESSETH

WHEREAS, under Article 20 of Chapter 160A of the North Carolina General Statutes, as amended (the “Interlocal Act”), cities and counties are authorized to enter into interlocal cooperation undertakings with other local governments for the joint exercise of any power, function, public enterprise, right, privilege, or immunity of local governments in North Carolina; and

WHEREAS, the purpose of the Agreement is to provide the terms of the relationship between the City and the County with respect to the financing, ownership and operation of a parking facility to provide approximately 660 spaces on Chestnut Street and 1st Street, near the County Government Center, City Hall, and the future Courthouse;

WHEREAS, the County will own the Parking Facility and the City will have the right to park its vehicles in approximately 183 spaces, and approximately 101 spaces will be available for public parking, and the City and the County desire to share proportionally the responsibilities of payment of the amounts to construct, operate, and maintain the Parking Facility;

NOW, THEREFORE, the parties hereto agree as follows:

Article I

Definitions

The following terms have the meanings herein:

“Agreement” means this Interlocal Agreement dated as of _____, 2019, between the City and the County, and any amendment or supplement thereto.

“City” means the City of Winston-Salem, North Carolina.

“City Share” means the ratio calculated as the number of City Spaces plus one-half of the number of Public Spaces, divided by all spaces in the Parking Facility. It is anticipated that the City Share will be $(183 + (1/2*101))/660 = 0.354$, or 35.4%.

“City Spaces” means the number of parking spaces in the Parking Facility reserved for City use.

“Contract” means an installment financing contract or installment purchase contract under N.C.G.S. 160A-20, entered into by the City with respect to the Parking Facility.

“County” means the County of Forsyth, North Carolina.

“County Spaces” means the number of spaces in the Parking Facility reserved for users other than the City and the Public.

“Debt Service” means all installment payments and additional payments required to be paid by the City under the Installment Financing Contract.

“Expense” means the expenses of acquisition, construction, design, planning, operation, maintenance, insurance, and current repair of the Parking Facility, including but not limited to debt service, environmental expenses, outside legal fees, recording fees, consultant fees, and any other costs borne by the County relating to the Parking Facility.

“Interlocal Act” means Section 160A-460 et seq., of the General Statutes of North Carolina.

“Monthly City Contribution” means, for each month, an amount equal to the prior month’s Expense multiplied by the City Share.

“Parking Facility” means a parking facility to provide approximately 660 spaces located at 1st Street and Chestnut Street, or nearby, in the City.

“Public Spaces” means the spaces in the Parking Facility reserved for members of the public, and not for County, City, or Court-related employees.

Article II

Statement of Purpose

Under the laws of the State of North Carolina, the City and the County each have the power to finance, own and operate the Parking Facility. The City and County are entering into this agreement under the Interlocal Act to cooperate in the financing of the Parking Facility for use by members of the public, the City, the County, and users of the Forsyth County Courthouse.

Article III

Financing, Construction and Operation of the Parking Facility

Section 3.1 Financing; Payments; Accounting. The County will finance the design and construction of the Parking Facility under N.C.G.S. 160A-20 or other applicable law by entering

into a Contract for a term of no longer than 20 years. The County will have sole responsibility for structuring and negotiating the terms of the Contract, subject to the restriction set forth in the preceding sentence.

The County will be the sole obligor as to installment payments and additional payments required under the Contract. Such payments will be a general fund obligation of the County, subject to appropriation by the Board of County Commissioners as required by N.C.G.S. 160A-20 or other applicable law and nothing herein shall be construed as a pledge of Revenues to payments due under the Contract.

Notwithstanding anything to the contrary herein, the County reserves the right to fund the Parking Facility using County funds on hand. In the event the County chooses to borrow less than the full amount required for the Parking Facility project and instead uses County funds on hand, the Expenses will include a repayment schedule of 20 years for such funds and shall include an interest charge for such funds calculated using the Bond Buyer's Municipal Bond Index as of the date of occupancy of the Parking Facility.

During the term of the Contract, the County will provide the City with an accounting of Expenses for the preceding month on or about the 10th of each month. The City will remit the Monthly City Contribution for the preceding month to the County within 10 days of the receipt of the monthly accounting.

Section 3.2 Construction. The County will have sole responsibility for the construction of the Parking Facility.

Section 3.3 Operation. The parties shall jointly agree in writing as to the operation of the Parking Facility.

Article IV

Ownership of the Property

Section 4.1 Ownership. The County will be the sole owner of the Parking Facility and will subject the Parking Facility to a lien and security interest as necessary to complete the financing under and as required by N.C.G.S. 160A-20.

Section 4.2 Right to use City Spaces. During the term of this Agreement, including any renewal terms, the City shall be entitled to exclusive use of the City Spaces, which are anticipated to be up to 183 parking spaces in the upper two levels of the Parking Facility.

Section 4.3 Sale of the Parking Facility. After the initial 30-year term expires, the County may, in its sole discretion, sell the Parking Facility upon providing 90 days written notice to the City. The County may sell the Parking Facility at an earlier date if the City and County agree in writing to do so. If the County sells the Parking Facility, it shall pay the City 35.4 percent of the net proceeds of the sale, after deducting all expenses associated with the sale and the value of the underlying land. Notwithstanding anything to the contrary herein, the County

hereby grants to the City a right of first refusal to purchase the Parking Facility if the County desires to sell the Parking Facility after the initial 30-year term has expired. If the County receives a bona fide offer to purchase the Parking Facility, the County shall give the City written notice of the County's intention to sell the Parking Facility as contained in said offer to purchase. Such notice ("the County Notice") shall state the terms and conditions under which the County intends to sell its interest. For thirty (30) days following the giving of such notice, the City shall have the option to purchase the Parking Facility at the same price and under the same terms as stated in the County Notice, deducting 35.4 percent of the value of the Parking Facility excluding the value of the underlying land.

Section 4.4 Damage to Parking Facility. If all or any part of the Parking Facility shall be damaged or destroyed by fire or other casualty, this Agreement shall continue in full force and effect, unless terminated as hereinafter provided, and the County shall repair, restore or rebuild the Parking Facility to the condition existing at the time of the occurrence of the loss; provided, however, the County shall not be obligated to commence such repair, restoration or rebuilding until insurance proceeds are received by the County, and the County's obligation hereunder shall be limited to the net insurance proceeds, those proceeds actually received by the County under any insurance policy or policies, if any, less those amounts (i) which have been required to be applied towards the reduction of any indebtedness secured by a mortgage covering the Parking Facility or any portion thereof, and (ii) which are used to reimburse the County for all costs and expenses, including but not limited to reasonable attorneys fees, incurred by Landlord to recover any such insurance proceeds. If the County determines that it is not feasible to repair, restore, or rebuild the Parking Facility, it shall distribute to the City 35.4 percent of such net insurance proceeds.

Article V

Revenues

Section 5.1 Revenues. During the term of the Contract, the County will retain all Revenues, and such Revenues will be offset against the Expenses, unless the parties reach an agreement concerning the operation of the Parking Facility, in which the parties may allocate the revenues in an alternate fashion.

Article VI

Duration

Section 6.1 Duration. This Agreement will have an initial term of thirty (30) years after execution, and shall have renewal terms of five (5) years each unless the City provides notice of termination at least 90 days before the term expires or unless the Parking Facility is sold pursuant to Section 4.3.

Article VII

Miscellaneous

Section 7.1 **Amendment.** This Agreement may be amended through a supplement approved in writing by the City and the County.

Section 7.2 **Severability.** If any section of this Agreement is deemed to be illegal or otherwise unenforceable, it is the intent of the parties hereto that all other provisions of this Agreement shall remain in full force and effect.

Section 7.3 **Governing Law.** This Agreement is to be governed by and interpreted in accordance with the laws of the State of North Carolina, with the exception that conflicts of laws provisions shall not apply.

Section 7.4 **Execution in Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each of which constitutes a completed document.

Section 7.5 **Effective Date.** This Agreement takes effect on its execution by the City and the County.

Section 7.6 **Assignment.** The City has no right to assign its responsibilities under this Agreement without the written permission of the County.

IN WITNESS WHEREOF, the Mayor of the City and the Chairman of the Forsyth County Board of Commissioners have each executed this Interlocal Agreement to evidence the agreement of the parties hereto and the City Secretary and the Clerk to the Board of County Commissioners have affixed the seal of the City and the County, as applicable, to this Interlocal Agreement.

City of Winston-Salem, North Carolina

Forsyth County, North Carolina

By: _____
Allen Joines, Mayor

By: _____
David Plyler, Chairman

Attest:

Attest:

Sandra Keeney, City Secretary

Ashleigh Sloop, Clerk to the Forsyth
County Board of Commissioners

[SEAL]

[SEAL]