

**FORSYTH COUNTY  
BOARD OF COMMISSIONERS**

**BRIEFING  
DRAFT**

9

MEETING DATE: MARCH 5, 2020 AGENDA ITEM NUMBER: \_\_\_\_\_

**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:**

**SUMMARY OF INFORMATION:**

ATTACHMENTS:  YES  NO

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
COUNTY MANAGER

**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, 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;

**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 (the "Parking Facility") on Chestnut and First Street in Winston-Salem and the Parking Lot on Second and Chestnut Street, which is a surface lot that extends under the existing parking deck serving the Wells Fargo Building;

**WHEREAS** on January 24, 2019, the County Commissioners adopted a resolution whereby the County and the City would operate the Parking Facility with the City contributing 35.4% of the construction, maintenance, and capital maintenance of the Parking Facility, and all Public Spaces would be in the Parking Facility;

**WHEREAS** moving the Public Spaces to the Parking Lot would improve the security profile of the Parking Facility;

**WHEREAS** the County Manager recommends amending the original resolution to move the Public Spaces from the Parking Facility to the Parking Lot and to include the County and the City jointly operating the Parking Lot with the City contributing 35.4% of the maintenance of the Parking Lot; and

**WHEREAS** in consideration for the City providing parking enforcement and other services for the Public Spaces and permitting jurors to park in the Parking Lot at no cost, the City may retain the fees collected from parking enforcement and the County will pay the City the following amounts each year for jurors to park at no cost in the Public Spaces:

TERM	ANNUAL PAYMENT
2023-2027	\$5,800
2028-2032	\$5,916
2033-2037	\$6,035
2038-2042	\$6,155
2043-2047	\$6,278

**NOW, THEREFORE, BE IT RESOLVED**, that the Chairman, the County Manager, and the Clerk to the Board are hereby authorized to execute an Interlocal Agreement, in substantially the same form as attached hereto and incorporated herein by reference, on behalf of

Forsyth County, subject to a pre-audit certificate thereon by the County 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 Parking Lot and receive the City Share equaling approximately 35.4% of costs associated with the development, construction, and maintenance of the Parking Facility and 35.4% of costs associated with maintenance of the Parking Lot; and

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

Adopted this 5<sup>th</sup> day of March 2020.

NORTH CAROLINA     )  
                                  )  
FORSYTH COUNTY     )

**INTERLOCAL AGREEMENT**

This **INTERLOCAL AGREEMENT** dated as of \_\_\_\_\_, \_\_\_\_\_ (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 1<sup>st</sup> Street, near the County Government Center, City Hall, and the future Courthouse; and

**WHEREAS** the County will own the Parking Facility and the City will have the right to park its vehicles in approximately 183 spaces in the Parking Facility, and approximately 149 spaces in the adjacent County Chestnut Street parking lots will be available for public parking, or alternatively, approximately 101 spaces in a parking deck 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 and the Parking Lot;

**NOW, THEREFORE**, the parties hereto agree as follows:

**Article I**

**Definitions**

The following terms have the meanings herein:

“Agreement” means this Interlocal Agreement 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 and Parking Lot 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 and the Parking Lot, 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 and the Parking Lot.

“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 1<sup>st</sup> Street and Chestnut Street, or nearby, in the City.

“Parking Lot” means the ground level County parking lots located on Chestnut Street adjacent to the Parking Facility.

“Public Spaces” means the spaces in the Parking Lot 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 10<sup>th</sup> of each month. The City will remit the Monthly City Contribution for the preceding month, and for any prior unpaid Monthly City Contribution, 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 Parking Facility and the Parking Lot shall be operated as set forth in Exhibit A. The Public Spaces shall initially be located in the Parking Lot as shown in Exhibit B. The County, in its sole discretion, may relocate the Public Spaces if it deems appropriate another use for the Parking Lot. If the County relocates the Public Spaces from the Parking Lot, it shall provide approximately 149 Public Spaces in a nearby ground level parking lot or 101 Public Spaces in a nearby parking deck, the City will cease operating the portion of the Parking Lot which no longer contains Public Spaces, and the parties will jointly agree to renegotiate the operation of the Public Spaces.

## 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 or Parking Lot 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 or Parking Lot 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, except as set forth in Exhibit A.

## **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.

Section 7.7 **Exhibit.** Exhibits A and B, attached hereto, is incorporated herein by reference.



**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]

## EXHIBIT A

### OPERATION AND MAINTENANCE

- A. The County will provide the following services, and they will be funded by the County paying the County Share of 64.6% of the cost and the City paying the City Share of 35.4% of the cost:
1. Periodic sweeping of the Parking Facility and Parking Lot;
  2. Parking Facility maintenance to include elevator preventive maintenance, caulking, labeling spaces, and similar maintenance as necessary;
  3. Facility repairs to include light replacement, life safety devices, parking arms, parking gates, elevator(s), and other replacements and repairs;
  4. Utilities;
  5. Landscaping maintenance;
  6. Security services to include alarm monitoring; and
  7. Initial installation of parking metering devices.
- B. The City will provide the following at City expense:
1. Parking enforcement services in the Parking Lot; and
  2. Replacement meters in the Parking Lot when the City of Winston-Salem deems appropriate.
- C. Access Cards:
1. The County will be solely responsible for expenses associated with access cards for State and County employees; and
  2. The City will be solely responsible for expenses associated with access cards for City employees.
- D. The County and City will share proportionally the responsibilities of payment of the amounts to construct, operate, and maintain the Parking Facility and Parking Lot using the County Share and City Share.
- E. The City will retain all revenues collected from parking enforcement activities and parking meter payments, provided that jurors with passes distributed by the County shall be allowed to park in Public Spaces without paying any fees, other than the County payment as provided in Section F herein.

F. In consideration of the City providing parking enforcement and other services for the Public Spaces, including spaces used by jurors, the County will pay the City the following amounts each year for juror parking in the Public Spaces, provided that this Section F shall terminate and no future payments pursuant to this Section F shall be required at such time as the County relocates juror parking to a location other than the Public Spaces:

TERM	ANNUAL PAYMENT
2023-2027	\$5,800
2028-2032	\$5,916
2033-2037	\$6,035
2038-2042	\$6,155
2043-2047	\$6,278

EXHIBIT B

Interlocal Agreement Parking Allocation

